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Virginia Register of Regulations

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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

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. 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 no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

November 2008 through August 2009

Volume: Issue	Material Submitted By Noon*	Will Be Published On
FINAL INDEX Volume 24		**October 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
25:22	June 17, 2009	July 6, 2009
25:23	July 1, 2009	July 20, 2009
25:24	July 15, 2009	August 3, 2009
25:25	July 29, 2009	August 17, 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.

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Title 1. Administration			
1 VAC 30-45-10 through 1 VAC 30-45-860	Added	24:25 VA.R. 3449-3506	**
1 VAC 30-46-10 through 1 VAC 30-46-210	Added	24:25 VA.R. 3506-3523	**
1 VAC 50-10-60 through 1 VAC 50-10-150	Repealed	25:2 VA.R. 119	10/29/08
1 VAC 50-11-10 through 1 VAC 50-11-110	Added	25:2 VA.R. 119-122	10/29/08
1 VAC 55-10-10 through 1 VAC 55-10-50	Repealed	25:2 VA.R. 122	10/29/08
1 VAC 55-11-10 through 1 VAC 55-11-110	Added	25:2 VA.R. 122-125	10/29/08
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 5-10-10 through 2VAC5-10-70	Repealed	25:3 VA.R. 342	11/12/08
2 VAC 5-11-10 through 2VAC5-11-110	Added	25:3 VA.R. 343-345	11/12/08
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 5-100-10 through 2 VAC 5-100-40	Repealed	24:26 VA.R. 3707	10/18/08
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 5-330-30	Amended	25:2 VA.R. 126	10/15/08
2 VAC 5-335-10 through 2 VAC 5-335-130	Added	25:2 VA.R. 126-129	10/15/08
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

** Suspension of Regulatory Process 25:3

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2 VAC 5-501-100	Amended	24:17 VA.R. 2336	6/12/08
2 VAC 5-510-10	Amended	24:17 VA.R. 2340	6/12/08
2 VAC 5-510-50	Amended	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-60	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-70	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-80	Repealed	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-90	Amended	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-100	Repealed	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-110	Amended	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-120	Repealed	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-130	Amended	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-140	Repealed	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-150	Amended	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-160	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-170	Amended	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-180	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-190	Amended	24:17 VA.R. 2348	6/12/08
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
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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 15-11-10 through 2 VAC 15-11-120	Repealed	25:4 VA.R. 576	11/26/08
2 VAC 15-12-10 through 2 VAC 15-12-110	Added	25:4 VA.R. 577-579	11/26/08
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

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2 VAC 20-51-10 through 2 VAC 20-51-50	Amended	25:3 VA.R. 346-350	12/1/08
2 VAC 20-51-70	Amended	25:3 VA.R. 350	12/1/08
2 VAC 20-51-90	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-100	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-160	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-170	Amended	25:3 VA.R. 352	12/1/08
2 VAC 20-51-200	Amended	25:3 VA.R. 352	12/1/08
2 VAC 20-51-210	Amended	25:3 VA.R. 352	12/1/08
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
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4 VAC 3-10-10	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-10-20	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-10-30	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-11-10 through 4 VAC 3-11-110	Added	25:2 VA.R. 130-132	10/29/08
4 VAC 5-10-10	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-10-20	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-10-30	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-11-10 through 4 VAC 5-11-110	Added	25:2 VA.R. 133-136	10/29/08
4 VAC 5-50-10 through 4VAC5-50-170	Repealed	24:17 VA.R. 2357	5/28/08
4 VAC 15-20-50	Amended	24:10 VA.R. 1258	1/1/08
4 VAC 15-20-130	Amended	24:10 VA.R. 1259	1/1/08
4 VAC 15-20-200	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-20-210	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-30-5	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-30-40	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-40-30	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

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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
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 20-260-35 emer	Amended	25:3 VA.R. 353	10/1/08-10/31/08
4 VAC 20-260-40 emer	Amended	25:3 VA.R. 353	10/1/08-10/31/08
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

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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 20-620-20	Amended	25:3 VA.R. 354	10/1/08
4 VAC 20-620-30	Amended	24:10 VA.R. 1281	12/27/07
4 VAC 20-620-30	Amended	25:3 VA.R. 354	10/1/08
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 20-620-40	Amended	25:3 VA.R. 355	10/1/08
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 20-720-20	Amended	25:3 VA.R. 357	10/1/08
4 VAC 20-720-40	Amended	24:12 VA.R. 1457	2/1/08
4 VAC 20-720-40	Amended	25:3 VA.R. 359	10/1/08
4 VAC 20-720-50	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-50	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-60	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-60	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-70	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-75	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-80	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-80	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-95	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-100	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-106 emer	Amended	25:1 VA.R. 24	9/1/08-9/30/08
4 VAC 20-720-106	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-750-10	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-10	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-30	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-30	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-40	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-50	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-751-10 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-15	Added	24:15 VA.R. 2027	3/1/08
4 VAC 20-751-15 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-20	Amended	24:15 VA.R. 2027	3/1/08
4 VAC 20-751-20 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08

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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 50-10-10	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-10-20	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-10-30	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-11-10 through 4 VAC 50-11-110	Added	25:2 VA.R. 138-141	10/29/08
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
4 VAC 50-20-260 through 4 VAC 50-20-320	Amended	24:25 VA.R. 3564-3565	9/26/08

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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 15-10-10 through 6 VAC 15-10-100	Repealed	25:3 VA.R. 363	11/15/08
6 VAC 15-11-10 through 6 VAC 15-11-110	Added	25:3 VA.R. 363-366	11/15/08
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 15-70-10	Amended	25:3 VA.R. 367	11/15/08
6 VAC 15-70-40 through 6 VAC 15-70-130	Amended	25:3 VA.R. 367-372	11/15/08
6 VAC 15-70-160	Amended	25:3 VA.R. 372	11/15/08
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 20-160-10	Amended	25:2 VA.R. 141	10/29/08
6 VAC 20-160-20	Amended	25:2 VA.R. 142	10/29/08
6 VAC 20-160-30	Amended	25:2 VA.R. 142	10/29/08
6 VAC 20-160-40	Amended	25:2 VA.R. 143	10/29/08
6 VAC 20-160-60	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-70	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-80	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-100	Amended	25:2 VA.R. 145	10/29/08
6 VAC 20-160-120	Amended	25:2 VA.R. 145	10/29/08
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 35-20-37 emer	Amended	25:3 VA.R. 373	8/1/07-1/31/09
6 VAC 35-20-37	Amended	25:4 VA.R. 626	12/12/08
6 VAC 35-51-10 through 6 VAC 35-51-1100	Added	24:25 VA.R. 3577-3610	9/17/08
6 VAC 35-140-46	Added	25:3 VA.R. 376	12/12/08
6 VAC 40-10-10 through 6 VAC 40-10-90	Repealed	25:2 VA.R. 146	10/30/08

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6 VAC 40-11-10 through 6 VAC 40-110	Added	25:2 VA.R. 147-149	10/30/08
6 VAC 40-20-30	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-120	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-130	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-160	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-50-10 through 6 VAC 40-50-80	Added	24:9 VA.R. 1103-1104	2/6/08
Title 7. Economic Development			
7 VAC 10-20-10 through 7 VAC 10-20-350	Repealed	24:26 VA.R. 3719	9/1/08
7 VAC 10-21-10 through 7 VAC 10-21-610	Added	24:26 VA.R. 3719-3729	9/1/08
Title 8. Education			
8 VAC 20-650-30	Amended	24:21 VA.R. 2936	9/15/08
8 VAC 40-10-10 through 8 VAC 40-10-90	Repealed	25:3 VA.R. 376	1/1/09
8 VAC 40-11-10 through 8 VAC 40-11-110	Added	25:3 VA.R. 377-379	1/1/09
Title 9. Environment			
9 VAC 10-10-10	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-10-20	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-10-30	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-11-10 through 9 VAC 10-11-110	Added	25:4 VA.R. 627-630	11/26/08
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 20-80-10	Amended	25:2 VA.R. 150	11/1/08
9 VAC 20-80-60	Amended	25:2 VA.R. 160	11/1/08
9 VAC 20-80-250	Amended	25:2 VA.R. 166	11/1/08
9 VAC 20-80-260	Amended	25:2 VA.R. 176	11/1/08
9 VAC 20-80-270	Amended	25:2 VA.R. 183	11/1/08
9 VAC 20-80-280	Amended	25:2 VA.R. 191	11/1/08
9 VAC 20-80-485	Amended	25:2 VA.R. 193	11/1/08
9 VAC 20-80-500	Amended	25:2 VA.R. 200	11/1/08
9 VAC 20-80-510	Amended	25:2 VA.R. 203	11/1/08
9 VAC 25-32 (Forms)	Amended	24:13 VA.R. 1738	--
9 VAC 25-120-10	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-20	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-50	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-60	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-70	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-80	Amended	24:9 VA.R. 1109	2/6/08
9 VAC 25-120-80	Amended	24:18 VA.R. 2502	6/11/08
9 VAC 25-193-40	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-193-70	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-196-20	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-40	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-60	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-70	Amended	24:9 VA.R. 1125	2/6/08
9 VAC 25-196-70	Amended	24:18 VA.R. 2532	6/11/08
9 VAC 25-210-10	Amended	24:9 VA.R. 1132	2/6/08
9 VAC 25-210-60	Amended	24:9 VA.R. 1136	2/6/08
9 VAC 25-210-116	Amended	24:9 VA.R. 1140	2/6/08
9 VAC 25-210-130	Amended	24:9 VA.R. 1142	2/6/08
9 VAC 25-260-30	Amended	24:13 VA.R. 1741	10/22/08
9 VAC 25-260-30	Amending	24:26 VA.R. 3747	8/12/08
9 VAC 25-640 Appendices I through IX	Amended	25:2 VA.R. 217-231	11/1/08

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9 VAC 25-640-10	Amended	25:2 VA.R. 206	11/1/08
9 VAC 25-640-20	Amended	25:2 VA.R. 209	11/1/08
9 VAC 25-640-30	Amended	25:2 VA.R. 209	11/1/08
9 VAC 25-640-50	Amended	25:2 VA.R. 210	11/1/08
9 VAC 25-640-70 through 9 VAC 25-640-120	Amended	25:2 VA.R. 210-213	11/1/08
9 VAC 25-640-130	Repealed	25:2 VA.R. 213	11/1/08
9 VAC 25-640-150 through 9 VAC 25-640-230	Amended	25:2 VA.R. 213-217	11/1/08
9 VAC 25-640-250	Amended	25:2 VA.R. 217	11/1/08
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 25-740-10 through 9 VAC 25-740-210	Added	24:26 VA.R. 3748-3773	10/1/08
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
10 VAC 5-160-10	Amended	24:26 VA.R. 3775	8/10/08
10 VAC 5-160-70	Added	24:26 VA.R. 3776	8/10/08
10 VAC 5-160-80	Added	24:26 VA.R. 3776	8/10/08
10 VAC 5-200-10	Amended	25:4 VA.R. 637	1/1/09
10 VAC 5-200-20	Amended	25:4 VA.R. 637	1/1/09
10 VAC 5-200-33	Added	25:4 VA.R. 638	1/1/09
10 VAC 5-200-35	Added	25:4 VA.R. 639	1/1/09
10 VAC 5-200-40	Amended	25:4 VA.R. 641	1/1/09
10 VAC 5-200-60	Amended	25:4 VA.R. 642	1/1/09
10 VAC 5-200-70	Amended	25:4 VA.R. 642	1/1/09
10 VAC 5-200-80	Amended	25:4 VA.R. 643	1/1/09
10 VAC 5-200-110	Added	25:4 VA.R. 646	1/1/09
10 VAC 5-200-115	Added	25:4 VA.R. 651	1/1/09
10 VAC 5-200-120	Added	25:4 VA.R. 650	1/1/09

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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
11 VAC 10-180-110	Amended	24:16 VA.R. 2259	4/14/08
11 VAC 15-12-10	Repealed	25:4 VA.R. 651	11/26/08
11 VAC 15-12-20	Repealed	25:4 VA.R. 651	11/26/08
11 VAC 15-13-10 through 11 VAC 15-13-110	Added	25:4 VA.R. 652-654	11/26/08
Title 12. Health			
12 VAC 5-10-10 through 12 VAC 5-10-80	Repealed	25:4 VA.R. 654	1/1/09
12 VAC 5-11-10 through 12 VAC 5-11-110	Added	25:4 VA.R. 655-657	1/1/09
12 VAC 5-67-10 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-67-20 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-67-30 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
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 5-220-110	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-220-130	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-160	Amended	25:1 VA.R. 25	10/15/08
12 VAC 5-220-200	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-200	Amended	25:1 VA.R. 26	10/15/08
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 5-481-10	Amended	25:2 VA.R. 231	11/1/08
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

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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 5-481-390	Amended	25:2 VA.R. 256	11/1/08
12 VAC 5-481-400	Amended	25:2 VA.R. 256	11/1/08
12 VAC 5-481-450	Amended	25:2 VA.R. 257	11/1/08
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 5-481-480	Amended	25:2 VA.R. 260	11/1/08
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
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

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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
12 VAC 5-481-2660 through 12 VAC 5-481-2950	Amended	24:18 VA.R. 2660-2661	6/12/08
12 VAC 5-481-2870	Amended	25:2 VA.R. 267	11/1/08
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 5-481-3160	Amended	25:2 VA.R. 267	11/1/08
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

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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	Repealed	24:18 VA.R. 2689	6/12/08
12 VAC 5-481-3680 through 12 VAC 5-481-3780	Added	24:18 VA.R. 2689-2715	6/12/08
12 VAC 5-481-3710	Amended	25:2 VA.R. 267	11/1/08
12 VAC 30-5-10 through 12 VAC 30-5-110	Added	25:3 VA.R. 380-383	11/12/08
12 VAC 30-10-815	Added	25:4 VA.R. 662	11/26/08
12 VAC 30-40-290 emer	Amended	25:1 VA.R. 35	8/27/08-8/26/09
12 VAC 30-50-130 emer	Amended	24:23 VA.R. 3165	7/2/08 - 7/1/09
12 VAC 30-50-140 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-150 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-180 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-228 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-491 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-60-180 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-60-185 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-60-500 emer	Added	25:3 VA.R. 384	8/8/07-2/7/09
12 VAC 30-70-70	Amended	25:3 VA.R. 387	11/27/08
12 VAC 30-70-221	Amended	24:21 VA.R. 2959	7/23/08
12 VAC 30-70-261	Amended	25:3 VA.R. 388	11/27/08
12 VAC 30-70-271	Amended	25:3 VA.R. 388	11/27/08
12 VAC 30-70-311	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-70-321	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-70-500	Repealed	25:3 VA.R. 389	11/27/08
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 30-80-32 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
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 30-80-190 emer	Amended	25:1 VA.R. 41	8/27/08-8/26/09
12 VAC 30-90-41	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-90-264	Amended	25:3 VA.R. 390	11/27/08
12 VAC 30-100-10 through 12 VAC 30-100-60	Repealed	25:3 VA.R. 383-384	11/12/08
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 30-120-100	Amended	24:26 VA.R. 3781	10/15/08
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 30-120-310 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-120-370 emer	Amended	25:3 VA.R. 393	9/1/07-3/3/09

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12 VAC 30-120-380 emer	Amended	25:3 VA.R. 393	9/1/07-3/3/09
12 VAC 30-120-380 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
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
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 30-135-10	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-20	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-30	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-40	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-70	Amended	24:26 VA.R. 3784	10/16/08
12 VAC 35-11-10 through 12 VAC 35-11-110	Repealed	25:2 VA.R. 271	10/29/08
12 VAC 35-12-10 through 12 VAC 35-12-110	Added	25:2 VA.R. 271-274	10/29/08
12 VAC 35-105-115	Added	24:11 VA.R. 1372	3/5/08
Title 13. Housing			
13 VAC 5-10-10 through 13 VAC 5-10-120	Repealed	25:4 VA.R. 666	11/26/08
13 VAC 5-11-10 through 13 VAC 5-11-110	Added	25:4 VA.R. 667-669	11/26/08
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

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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
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 5-200-10	Amended	24:26 VA.R. 3784	10/1/08
13 VAC 5-200-40 through 13 VAC 5-200-80	Amended	24:26 VA.R. 3784-3785	10/1/08
13 VAC 5-200-100	Amended	24:26 VA.R. 3785	10/1/08
13 VAC 6-10-10 through 13 VAC 6-10-120	Repealed	25:3 VA.R. 394	11/13/08
13 VAC 6-11-10 through 13 VAC 6-11-110	Added	25:3 VA.R. 394-397	11/13/08
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	--

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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
14 VAC 5-395-40	Amended	24:26 VA.R. 3811	8/29/08
Title 15. Judicial			
15 VAC 5-80-50	Amended	24:23 VA.R. 3211	7/1/08
Title 16. Labor and Employment			
16 VAC 15-10-10 through 16 VAC 15-10-100	Repealed	25:4 VA.R. 672	11/26/08
16 VAC 15-11-10 through 16 VAC 15-11-110	Added	25:4 VA.R. 672-675	11/26/08
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 20-10-10 through 16 VAC 20-10-100	Repealed	25:4 VA.R. 675	11/27/08
16 VAC 20-11-10 through 16 VAC 20-11-110	Added	25:4 VA.R. 676-678	11/27/08
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
16 VAC 25-10-10 through 16 VAC 25-10-120	Repealed	24:26 VA.R. 3811	10/1/08
16 VAC 25-11-10 through 16 VAC 25-11-110	Added	24:26 VA.R. 3811-3814	10/1/08
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 5-10-10 through 18 VAC 5-10-90	Repealed	25:4 VA.R. 678	11/26/08
18 VAC 5-11-10 through 18 VAC 5-11-110	Added	25:4 VA.R. 679-682	11/26/08
18 VAC 10-10-10 through 18 VAC 10-10-90	Repealed	25:4 VA.R. 682	11/27/08
18 VAC 10-11-10 through 18 VAC 10-11-110	Added	25:4 VA.R. 682-685	11/27/08
18 VAC 10-20-10	Amended	25:3 VA.R. 397	12/1/08
18 VAC 10-20-120	Amended	25:3 VA.R. 399	12/1/08
18 VAC 10-20-280	Amended	25:3 VA.R. 399	12/1/08

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18 VAC 10-20-295	Amended	25:3 VA.R. 400	12/1/08
18 VAC 10-20-310	Amended	25:3 VA.R. 400	12/1/08
18 VAC 10-20-340	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-350	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-360	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-380	Amended	25:3 VA.R. 402	12/1/08
18 VAC 10-20-382	Added	25:3 VA.R. 403	12/1/08
18 VAC 10-20-392	Added	25:3 VA.R. 404	12/1/08
18 VAC 10-20-395	Added	25:3 VA.R. 404	12/1/08
18 VAC 10-20-760	Amended	25:3 VA.R. 404	12/1/08
18 VAC 15-10-10 through 18 VAC 15-10-90	Repealed	25:1 VA.R. 55	10/15/08
18 VAC 15-11-10 through 18 VAC 15-11-110	Added	25:1 VA.R. 55-58	10/15/08
18 VAC 15-20-451	Amended	24:17 VA.R. 2455	8/1/08
18 VAC 30-20 (Forms)	Amended	24:26 VA.R. 3814	--
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 45-10-10 through 18 VAC 45- 10-90	Repealed	24:26 VA.R. 3815	10/2/08
18 VAC 45-11-10 through 18 VAC 45-11-110	Added	24:26 VA.R. 3815-3818	10/2/08
18 VAC 48-10-10 through 18 VAC 48-10-110	Added	25:3 VA.R. 411-414	11/13/08
18 VAC 48-40-10 through 18 VAC 48-40-110	Added	25:4 VA.R. 685-688	11/27/08
18 VAC 48-60-10 through 18 VAC 48-60-60	Added	25:4 VA.R. 688-689	11/27/08
18 VAC 50-22-40	Amended	25:3 VA.R. 415	12/1/08
18 VAC 50-22-50	Amended	25:3 VA.R. 415	12/1/08
18 VAC 50-22-60	Amended	25:3 VA.R. 416	12/1/08
18 VAC 50-22-300 through 18 VAC 50-22-350	Added	25:3 VA.R. 417-418	12/1/08
18 VAC 60-10-10 through 18 VAC 60-10-120	Repealed	25:3 VA.R. 418	11/12/08
18 VAC 60-11-10 through 18 VAC 60-11-110	Added	25:3 VA.R. 419-422	11/12/08
18 VAC 60-20 (Forms)	Amended	25:1 VA.R. 58	--
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 65-10-10 through 18 VAC 65-10-120	Repealed	25:2 VA.R. 291	10/29/08
18 VAC 65-11-10 through 18 VAC 65-11-110	Added	25:2 VA.R. 291-294	10/29/08
18 VAC 65-20 (Forms)	Amended	24:26 VA.R. 3818	--
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

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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 65-40 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 75-10-10 through 18 VAC 75-10-120	Repealed	25:2 VA.R. 294	10/29/08
18 VAC 75-11-10 through 18 VAC 75-11-110	Added	25:2 VA.R. 295-297	10/29/08
18 VAC 75-20 (Forms)	Amended	24:25 VA.R. 3632	--
18 VAC 76-20 (Forms)	Amended	24:26 VA.R. 3819	--
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 76-40 (Forms)	Amended	24:26 VA.R. 3820	--
18 VAC 85-10-10 through 18 VAC 85-10-110	Repealed	24:26 VA.R. 3820	10/1/08
18 VAC 85-11-10 through 18 VAC 85-11-110	Added	24:26 VA.R. 3820	10/1/08
18 VAC 85-20 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-20-22	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-22	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 85-20-225	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 (Forms)	Amended	24:26 VA.R. 3823	--
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 (Forms)	Amended	24:26 VA.R. 3823	--
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 (Forms)	Amended	24:26 VA.R. 3823	--
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 (Forms)	Amended	24:26 VA.R. 3823	--
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 (Forms)	Amended	24:26 VA.R. 3823	--
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 (Forms)	Amended	24:26 VA.R. 3823	--
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

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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 (Forms)	Amended	24:26 VA.R. 3823	--
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 (Forms)	Amended	25:1 VA.R. 59	--
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
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 90-25 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30 (Forms)	Amended	25:1 VA.R. 59	--
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 90-40 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-50 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-50-10	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-40	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-75	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-80	Amended	25:4 VA.R. 692	12/11/08
18 VAC 90-50-90	Amended	25:4 VA.R. 692	12/11/08
18 VAC 90-60 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-60-110	Amended	24:23 VA.R. 3216	9/4/08
18 VAC 95-20 (Forms)	Amended	24:26 VA.R. 3827	--
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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 (Forms)	Amended	24:26 VA.R. 3827	--
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 105-10-10 through 18 VAC 105-10-120	Repealed	24:26 VA.R. 3828	10/1/08
18 VAC 105-11-10 through 18 VAC 105-11-110	Added	24:26 VA.R. 3828-3831	10/1/08
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 110-10-10 through 18 VAC 110-10-120	Repealed	25:2 VA.R. 298	10/29/08
18 VAC 110-11-10 through 18 VAC 110-11-110	Added	25:2 VA.R. 298-301	10/29/08
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 110-20-20 emer	Amended	25:3 VA.R. 464	9/23/08-9/22/09
18 VAC 110-20-75	Amended	24:22 VA.R. 3071	8/6/08
18 VAC 110-20-220	Amended	25:4 VA.R. 694	12/11/08
18 VAC 110-20-230	Repealed	25:4 VA.R. 695	12/11/08
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 110-50-20 emer	Amended	25:3 VA.R. 466	9/23/08-9/22/09
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 112-10-10 through 18 VAC 112-10-120	Repealed	25:1 VA.R. 61	10/15/08
18 VAC 112-11-10 through 18 VAC 112-11-110	Added	25:1 VA.R. 62-64	10/15/08
18 VAC 112-20 (Forms)	Amended	24:26 VA.R. 3831	--
18 VAC 112-20-81 emer	Added	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-90 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-130 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-131 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-150 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 115-10-10 through 18 VAC 115-10-120	Repealed	24:26 VA.R. 3832	10/1/08
18 VAC 115-11-10 through 18 VAC 115-11-110	Added	24:26 VA.R. 3832-3835	10/1/08
18 VAC 115-20 (Forms)	Amended	25:1 VA.R. 65	--
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 (Forms)	Amended	25:1 VA.R. 65	--
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

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18 VAC 115-40 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-50 (Forms)	Amended	25:1 VA.R. 65	--
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 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-60-10	Amended	24:24 VA.R. 3392	9/3/08
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 120-10-100 through 18 VAC 120-10-180	Repealed	24:26 VA.R. 3835	10/2/08
18 VAC 120-11-10 through 18 VAC 120-11-110	Added	24:26 VA.R. 3836-3838	10/2/08
18 VAC 125-10-10 through 18 VAC 125-10-120	Repealed	25:4 VA.R. 699	11/26/08
18 VAC 125-11-10 through 18 VAC 125-11-110	Added	25:4 VA.R. 699-702	11/26/08
18 VAC 125-20 (Forms)	Amended	25:1 VA.R. 66	--
18 VAC 125-20-170	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 125-30 (Forms)	Amended	25:1 VA.R. 66	--
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 (Forms)	Amended	25:1 VA.R. 67	--
18 VAC 140-20-10	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-40	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-50	Amended	24:23 VA.R. 3234	9/4/08
18 VAC 140-20-50	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-51	Added	25:4 VA.R. 705	11/26/08

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18 VAC 140-20-60	Amended	25:4 VA.R. 705	11/26/08
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 140-20-105	Amended	25:4 VA.R. 706	11/26/08
18 VAC 140-20-140	Repealed	25:4 VA.R. 707	11/26/08
18 VAC 140-20-150	Amended	25:4 VA.R. 707	11/26/08
18 VAC 140-20-160	Amended	25:4 VA.R. 709	11/26/08
18 VAC 150-10-10 through 18 VAC 150-10-120	Repealed	25:1 VA.R. 68	10/15/08
18 VAC 150-11-10 through 18 VAC 150-11-110	Added	25:1 VA.R. 68-71	10/15/08
18 VAC 150-20 (Forms)	Amended	24:26 VA.R. 3838	--
18 VAC 150-20-135	Amended	24:21 VA.R. 2969	7/23/08
18 VAC 160-10-10 through 18 VAC 160-10-90	Repealed	25:4 VA.R. 709	11/26/08
18 VAC 160-11-10 through 18 VAC 160-11-110	Added	25:4 VA.R. 709-712	11/26/08
Title 19. Public Safety			
19 VAC 30-10-10 through 19 VAC 30-10-40	Repealed	24:26 VA.R. 3839	10/1/08
19 VAC 30-11-10 through 19 VAC 30-11-110	Added	24:26 VA.R. 3839-3842	10/1/08
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 20. Public Utilities and Telecommunications			
20 VAC 5-315-10	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-20	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-40	Amended	24:26 VA.R. 3846	8/25/08
20 VAC 5-315-50	Amended	24:26 VA.R. 3847	8/25/08
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
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			

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22 VAC 5-30-10 through 22 VAC 5-30-60	Added	24:25 VA.R. 3665-3669	1/1/09
22 VAC 15-10-10 through 22 VAC 15-10-70	Repealed	25:4 VA.R. 712	1/1/09
22 VAC 15-11-10 through 22 VAC 15-11-110	Added	25:4 VA.R. 713-715	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 30-10-10	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-20	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-20	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-40	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-40	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-50	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-50	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-60	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-11-10 through 22 VAC 30-11-110	Added	25:1 VA.R. 72-74	10/15/08
22 VAC 40-11-10 through 22 VAC 40-11-70	Repealed	25:1 VA.R. 74	1/1/09
22 VAC 40-12-10 through 22 VAC 40-12-110	Added	25:1 VA.R. 74-78	1/1/09
22 VAC 40-151-10 through 22 VAC 40-151-1020	Added	25:3 VA.R. 482-512	1/1/09
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 10-10-10 through 23 VAC 10-10-80	Repealed	25:4 VA.R. 730	12/28/08
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 10-11-10 through 23 VAC 10-11-110	Added	25:4 VA.R. 732-735	12/28/08
23 VAC 10-20-155	Added	24:26 VA.R. 3848	10/1/08
23 VAC 10-210-20	Repealed	24:26 VA.R. 3849	10/1/08
23 VAC 10-210-170	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-595	Added	25:4 VA.R. 736	11/26/08
23 VAC 10-210-693	Amended	24:23 VA.R. 3240	10/6/08
23 VAC 10-210-870	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-4010	Repealed	25:4 VA.R. 736	11/26/08
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 22-10-10 through 24 VAC 22-10-140	Repealed	25:4 VA.R. 752	11/26/08
24 VAC 22-11-10 through 24 VAC 22-11-110	Added	25:4 VA.R. 753-755	11/26/08
24 VAC 25-10-10	Repealed	25:3 VA.R. 519	10/13/08
24 VAC 25-20-10	Repealed	25:3 VA.R. 519	10/13/08
24 VAC 27-30-10 through 24 VAC 27-30-190	Added	25:1 VA.R. 78-89	10/15/08
24 VAC 30-16-10	Repealed	25:3 VA.R. 520	11/12/08
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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF FORESTRY

Initial Agency Notice

Title of Regulation: **4VAC10-30. Regulations Pertaining to State Forests and Carrying Firearms.**

Statutory Authority: § 10.1-1101 of the Code of Virginia.

Name of Petitioner: Philip Van Cleave, President, Virginia Citizens Defense League.

Nature of Petitioner's Request: Change regulations to allow the lawful carry of handguns, either concealed with a concealed handgun permit, or openly in a state forest.

Agency's Plan for Disposition of Request: The Department of Forestry shall submit notice of the petition to the Registrar for publication in the Virginia Register. The notice will be available for a 21-day comment period by the public. After the close of the 21-day comment period, the agency will issue a written decision as to whether it will grant or deny the petition.

Comments may be submitted until December 2, 2008.

Agency Contact: Ron Jenkins, Assistant State Forester, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 977-7749, or email ron.jenkins@dof.virginia.gov.

VA.R. Doc. No. R09-06; Filed October 16, 2008, 12:18 p.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider promulgating the following regulations: **2VAC5-405, Regulations for the Application of Fertilizer to Nonagricultural Lands.** The purpose of the proposed action is to ensure that contractor-applicators and licensees applying fertilizers on nonagricultural property are trained and certified in the proper use and application of fertilizers in order to minimize the potential environmental impact that may result from improper use and over-application. The resulting nutrient management training and certification program requirements must comport with the guidelines promulgated by the Department of Conservation and Recreation pursuant to § 10.1-104.2 of the Code of Virginia. The board will establish such requirements in consultation with a technical advisory committee of stakeholders formed by the board.

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

Statutory Authority: § 3.2-3602.1 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on December 10, 2008.

Agency Contact: Robert E. Bailey, Program Manager, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-2476, FAX (804) 786-1571, or email robert.bailey@vdacs.virginia.gov.

VA.R. Doc. No. R09-1656; Filed October 9, 2008, 8:43 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF CORRECTIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Corrections intends to consider amending the following regulations: **6VAC15-28, Regulations for Public/Private Joint Venture Work Programs Operated in a State Correctional Facility.** The purpose of the proposed action is to govern the form and review process for proposed agreements between the Director of the Department of Corrections and a public or private entity to operate a work program in a state correctional facility. There have been changes to the Code of Virginia related to "Work Programs and Agreements with Other Entities" that may require amendments to this regulation.

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

Statutory Authority: §§ 53.1-5 and 53.1-45.1 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on December 10, 2008.

Agency Contact: Janice Dow, Policy and Initiatives Unit Manager, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23261, telephone (804) 674-3303 ext: 1128, FAX (804) 674-3017, or email janice.dow@vadoc.virginia.gov.

VA.R. Doc. No. R09-1544; Filed October 17, 2008, 3:26 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending the following regulations: **12VAC5-90, Regulations for Disease Reporting and Control.** The purpose of the proposed action is to update the regulations relative to reporting outbreaks, isolation and quarantine, prenatal testing, immunization and tuberculosis control, and to clarify definitions and reportable disease lists.

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

Statutory Authority: §§ 32.1-12 and 32.1-35 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on December 10, 2008.

Agency Contact: Diane Woolard, PhD, Director, Disease Surveillance, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8124, or email diane.woolard@vdh.virginia.gov.

VA.R. Doc. No. R09-1657; Filed October 9, 2008, 11:19 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board intends to consider promulgating the following regulations: **18VAC48-20, Condominium Regulations.** The purpose of the proposed action is to establish the requirements for registration of condominium projects by the Common Interest Community Board. The condominium regulations were previously under the purview of the Real Estate Board and this regulatory action will transfer the regulations to the Common Interest Community Board. The only substantial change is that references to the Horizontal Property Act will be removed because § 55-79.2 of the Code of Virginia defines "Board" as the Real Estate Board. Therefore, horizontal property regimes will continue under the purview of the Real Estate Board until such time as this Act is amended.

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

Statutory Authority: §§ 54.1-201, 54.1-2349 and 55-79.98 of the Code of Virginia.

Public Comments: Public comments will be received until 5 p.m. on December 10, 2008.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-0362, FAX (804) 367-4297, or email cic@dpor.virginia.gov.

VA.R. Doc. No. R09-1567; Filed October 21, 2008, 2:55 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board intends to consider promulgating the following regulations: **18VAC48-50, Common Interest Community Manager Regulations.** The purpose of the proposed action is to establish regulations for the Common Interest Community Manager regulatory program.

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

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Public Comments: Public comments will be received until 5 p.m. on December 10, 2008.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4298, or email cic@dpor.virginia.gov.

VA.R. Doc. No. R09-1641; Filed October 21, 2008, 2:54 p.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medicine intends to consider amending the following regulations: **18VAC85-80, Regulations Governing the Licensure of Occupational Therapists.** The purpose of the proposed action is to establish requirements and qualifications for the licensure of occupational therapy assistants.

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

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

Public comments: Public comments may be submitted until 5 p.m. on December 10, 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.

VA.R. Doc. No. R09-1387; Filed October 22, 2008, 9:25 a.m.

TITLE 2. AGRICULTURE

PESTICIDE CONTROL 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: **2VAC20-10. Public Participation Guidelines (repealing 2VAC20-10-10 through 2VAC20-10-120).**

2VAC20-11. Public Participation Guidelines (adding 2VAC20-11-10 through 2VAC20-11-110).

Statutory Authority: §§ 2.2-4007.02 and 3.2-3906 of the Code of Virginia.

Effective Date: December 10, 2008.

Agency Contact: Liza Fleeson, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 786-9149, TTY (800) 828-1120, or email liza.fleeson@vdacs.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 actions; (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

2VAC20-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Pesticide Control 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).

2VAC20-11-20. 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 Pesticide Control 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

2VAC20-11-30. 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.

2VAC20-11-40. 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 2VAC20-11-30, 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 reproposed, 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

2VAC20-11-50. 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 reproposed 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.

2VAC20-11-60. 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.

2VAC20-11-70. 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.

2VAC20-11-80. 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.

2VAC20-11-90. 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.

2VAC20-11-100. 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.

2VAC20-11-110. 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. R09-1424; Filed October 20, 2008, 2:19 p.m.

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TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Fast-Track Regulation

Titles of Regulations: **4VAC25-10. Public Participation Guidelines (repealing 4VAC25-10-10 through 4VAC25-10-90).**

4VAC25-11. Public Participation Guidelines (adding 4VAC25-11-10 through 4VAC25-11-120).

Statutory Authority: §§ 2.2-4007.02, 45.1-161.3, 45.1-161.28, and 45.1-161.292:19 and 45.1-361.15 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until December 10, 2008.

Effective Date: December 25, 2008.

Agency Contact: David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email david.spears@dmme.virginia.gov.

Basis: Section 2.2-4007.02 of the Code of Virginia requires agencies to develop and adopt public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations.

Section 45.1-161.3 of the Code of Virginia authorizes the department, Chief of the Division of Mines, or department director, as appropriate, to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Title 45.1 and other relevant chapters.

Section 45.1-161.28 of the Code of Virginia authorizes the Board of Coal Mining Examiners to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Title 45.1.

Section 45.1-161.292:19 of the Code of Virginia authorizes the Board of Mineral Mining Examiners to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Title 45.1.

Section 45.1-361.15 of the Code of Virginia authorizes the Virginia Gas and Oil Board to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Title 45.1.

Purpose: This action is being taken pursuant to Chapter 321 of the 2008 Acts of Assembly, which requires every rulemaking body in the Commonwealth to adopt the model public participation guidelines. The agency has no discretion in this matter.

Rationale for using fast-track process: This action is expected to be noncontroversial because it is mandated by the Virginia General Assembly.

Substance: This action repeals the entire chapter, 4VAC25-10, Public Participation Guidelines, and replaces it with a new chapter, 4VAC25-11, Public Participation Guidelines, as required by Chapter 321 of the 2008 Acts of Assembly. The new chapter has substantially similar provisions to the original chapter, and is based on the model public

participation guidelines developed by the Department of Planning and Budget, with one exception. DMME has added one section to the model guidelines, "Agency secretary for purpose of appeal," a section carried over from the agency's existing guidelines. This section defines who in the agency shall act as "agency secretary" for appeals of regulatory or case decisions pursuant to Rule 2A:2 of the Supreme Court of Virginia.

Issues: The model public participation guidelines will provide advantages to the public in the form of more consistent public participation requirements for agencies in the rulemaking process. No disadvantages are anticipated for the public, the agency, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Mines, Minerals and Energy (DMME) proposes to adopt the model public participation guidelines developed by the Department of Planning and Budget in consultation with the Office of the Attorney General (as required by Chapter 321 of the 2008 Acts of Assembly), with one amendment; DMME proposes to add a section defining "Agency secretary for purpose of appeal." This section is part of the agency's current PPGs.

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

Estimated Economic Impact. Pursuant to Chapter 321 of the 2008 Acts of Assembly, the Department of Planning and Budget, in consultation with the Office of the Attorney General, (i) developed model public participation guidelines (PPGs) and (ii) provided these model PPGs to each agency that has the authority to promulgate regulations. Chapter 321 requires that by December 1, 2008, each agency shall either (a) adopt the model public participation guidelines as an exempt action or (b) if significant additions or changes are proposed, promulgate the model public participation guidelines with the proposed changes as fast-track regulations pursuant to Code of Virginia § 2.2-4012.1.

The purpose of the model PPG legislation is threefold: first, to ensure that each agency or board has a current set of PPGs in place.[1] Second, to ensure that each agency or board's PPGs incorporate the use of technology such as the Virginia Regulatory Town Hall, email to the extent possible, and the use of electronic mailing lists. Last, but perhaps most importantly, to have uniform guidelines in place to facilitate citizen participation in rulemaking and to make those guidelines consistent, to the extent possible, among all executive branch boards and agencies.

DMME is proposing only one change to the model PPGs, to add a section defining "Agency secretary for purpose of appeal." Rule 2A:2 of the Supreme Court of Virginia specifies that "Any party appealing from a regulation or case decision shall file, within 30 days after adoption of the regulation or after service of the final order in the case decision, with the agency secretary a notice of appeal signed by him or his counsel." The proposed additional section specifies that: 1) the division head of the Division of Mines (Chief) shall perform the functions of agency secretary for appeals relating to Chapter 14.2, 14.3, 14.4 or 18 of Title 45.1 of the Code of Virginia, 2) the division head of the Division of Mineral Mining (Division Director) shall perform the functions of agency secretary for appeals relating to Chapter 14.4:1, 14.5, 14.6, 16, 18.1 or 21 of Title 45.1 of the Code of Virginia, 3) the division head of the Division of Gas and Oil (Division Director) shall perform the functions of agency secretary for appeals relating to Chapter 15.1 or 22.1 of Title 45.1 of the Code of Virginia, and 4) the division head of the Division of Mined Land Reclamation (Division Director) shall perform the functions of agency secretary for appeals relating to Chapters 17 and 19 of Title 45.1 of the Code of Virginia. Specifying which division head serves as agency secretary for specific regulations is beneficial in that it provides clarity for the public.

As described above, promulgating the otherwise model PPGs will be beneficial in that the DMME PPGs will: 1) reflect current information, 2) incorporate the use of technology such as the Virginia Regulatory Town Hall, email to the extent possible, and the use of electronic mailing lists, and 3) be largely consistent with other agency PPGs which will facilitate citizen participation in rulemaking.

Businesses and Entities Affected. All businesses, other entities, or individuals interested in participating in the regulatory process as it relates to DMME's regulations are potentially affected by the agency's public participation guidelines.

Localities Particularly Affected. Businesses, other entities, and individuals in all of Virginia's localities are potentially affected by DMME's regulations.

Projected Impact on Employment. The proposal amendments do not directly affect employment.

Effects on the Use and Value of Private Property. The proposal amendments do not directly affect the use and value of private property.

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

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

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the

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

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[1] Some agencies and boards have not updated their PPGs since the mid-late 1980's.

Agency's Response to the Economic Impact Analysis: The Department of Mines, Minerals and Energy concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

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 actions; (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.

The department has made one change to the model public participation guidelines by adding a section defining who in the agency shall act as agency secretary for appeals of regulatory or case decisions pursuant to Rule 2A:2 of the Supreme Court of Virginia. This section is part of the agency's current public participation guidelines.

CHAPTER 11
PUBLIC PARTICIPATION GUIDELINES

Part I
Purpose and Definitions

4VAC25-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department of Mines, Minerals and Energy. 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).

4VAC25-11-20. 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 Mines, Minerals and Energy, 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

4VAC25-11-30. 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.

4VAC25-11-40. 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 4VAC25-11-30, 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 reproposed, 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

4VAC25-11-50. 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 reproposed 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.

4VAC25-11-60. 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.

4VAC25-11-70. 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.

4VAC25-11-80. 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.

4VAC25-11-90. 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.

4VAC25-11-100. 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.

4VAC25-11-110. 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.

4VAC25-11-120. Agency secretary for purpose of appeal.

For appeals of regulatory or case decisions, pursuant to Rule 2A:2 of the Rules of the Supreme Court of Virginia, the agency herein names individuals to perform the function of agency secretary.

1. For appeals relating to Chapter 14.2 (§ 45.1-161.7 et seq.), 14.3 (§ 45.1-161.105 et seq.), 14.4 (§ 45.1-161.253 et seq.) or 18 (§ 45.1-221 et seq.) of Title 45.1 of the Code of Virginia, the division head of the Division of Mines (Chief) shall perform the functions of agency secretary.

2. For appeals relating to Chapter 14.4:1 (§ 45.1-161.292:1 et seq.), 14.5 (§ 45.1-161.293 et seq.), 14.6 (§ 45.1-161.304 et seq.), 16 (§ 45.1-180 et seq.), 18.1 (§ 45.1-225.1 et seq.) or 21 (§ 45.1-272 et seq.) of Title 45.1 of the Code of Virginia, the division head of the Division of Mineral Mining (Division Director) shall perform the functions of agency secretary.

3. For appeals relating to Chapter 15.1 (§ 45.1-179.1 et seq.) or 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia, the division head of the Division of Gas and Oil (Division Director) shall perform the functions of agency secretary.

4. For appeals relating to Chapters 17 (§ 45.1-198 et seq.) and 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia, the division head of the Division of Mined Land Reclamation (division director) shall perform the functions of agency secretary.

VA.R. Doc. No. R09-1431; Filed October 20, 2008, 2:51 p.m.

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TITLE 8. EDUCATION

GEORGE MASON UNIVERSITY

Final 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.

Effective Date: November 10, 2008.

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 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 October 22, 2008, 2:44 p.m.

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TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL 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: **9VAC5-5. Public Participation Guidelines (adding 9VAC5-5-10 through 9VAC5-5-110).**

9VAC5-170. Regulation for General Administration (amending 9VAC5-170-20, 9VAC5-170-40, 9VAC5-170-80; repealing 9VAC5-170-90, 9VAC5-170-100, 9VAC5-170-110).

Statutory Authority: §§ 2.2-4007.02 and 10.1-1308 of the Code of Virginia.

Effective Date: January 1, 2009.

Agency Contact: 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.

Summary: 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 actions; (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 5
PUBLIC PARTICIPATION GUIDELINES

Part I
Purpose and Definitions

9VAC5-5-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the State Air Pollution Control 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).

9VAC5-5-20. 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 State Air Pollution Control 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

9VAC5-5-30. 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.

9VAC5-5-40. 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 9VAC5-5-30, 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 reproposed, 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

9VAC5-5-50. 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 reproposed 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.

9VAC5-5-60. 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.

9VAC5-5-70. 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.

9VAC5-5-80. 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.

9VAC5-5-90. 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.

9VAC5-5-100. 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.

9VAC5-5-110. 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.

9VAC5-170-20. Terms defined.

"Administrative proceeding" means an informal fact finding or formal hearing.

"Administrative Process Act" means ~~Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9~~ Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

"Board" means the State Air Pollution Control Board or its designated representative.

"Case decision" means any determination that a named party as a matter of past or present fact, or as a matter of threatened or contemplated private action, either is or is not, or may or may not be (i) in violation of any law or regulations, or (ii) in compliance with any existing requirement for obtaining or retaining a permit or other right or benefit. Case decisions include, but are not limited to, consent orders, consent agreements, orders, special orders, emergency special orders, permits, waivers, and licenses. Case decisions do not include notices of violations, variances, regulations, or inspection reports.

"Confidential information" means secret formulae, secret processes, secret methods or other trade secrets which are proprietary information certified by the signature of the responsible person for the owner to meet the following criteria: (i) information for which the owner has been taking and will continue to take measures to protect confidentiality; (ii) information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding; (iii) information which is not publicly available from sources other than the owner; and (iv) information the disclosure of which would cause substantial harm to the owner.

"Consent agreement" means an agreement that the owner or another person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with the regulations of the board, by mutual agreement of the owner or another person and the board.

"Consent order" means a consent agreement issued as an order. Consent orders may be issued without a formal hearing.

"Department" means an employee or other representative of the Virginia Department of Environmental Quality as designated by the director.

"Director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural, or other reasonable use.

"Emergency special order" means an order of the board issued under the provisions of § 10.1-1309 B of the Code of Virginia, after declaring a state of emergency and without a formal hearing, to owners who are permitting or causing air pollution to cease the pollution. These orders shall become invalid if a formal hearing is not held within 10 days after the effective date.

"Enabling law" or "enabling laws" means provisions of the Constitution and statutes of the Commonwealth of Virginia authorizing the board to make regulations or decide cases or containing procedural requirements therefor, including, but not limited to, the (i) Virginia Air Pollution Control Law and (ii) the Virginia Motor Vehicle Emissions Control Law.

"Evidentiary hearing" means a formal proceeding which provides opportunity for interested persons to submit factual proofs in formal proceedings as provided in ~~§ 9-6.14:8~~ § 2.2-4009 of the Administrative Process Act in connection with the making of regulations. Evidentiary hearings do not include the informational inquiries of an informal nature provided in ~~§ 9-6.14:7.1~~ § 2.2-4007.01 B of the Administrative Process Act.

"Federal Clean Air Act" means 42 USC 7401 et seq., 91 Stat 685.

"Formal hearing" means a formal proceeding which provides for the right of private parties to submit factual proofs as provided in ~~§ 9-6.14:12~~ § 2.2-4020 of the

Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in ~~§ 9-6.14:11~~ § 2.2-4019 of the Administrative Process Act.

"Informal fact finding" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in ~~§ 9-6.14:11~~ § 2.2-4019 of the Administrative Process Act.

"Locality" means a city, town, county or other public body created by or pursuant to state law.

~~"Locality particularly affected" means a locality which bears an identified disproportionate material impact which would not be experienced by other localities.~~

"Order" means a decision or directive of the board, including special orders, emergency special orders, and other orders of all types, rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of the regulations of the board. Unless specified otherwise in the Virginia Air Pollution Control Law or in the regulations of the board, orders shall be issued only after the appropriate administrative proceeding.

"Owner" means a person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a source.

~~"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the department, or (iv) a combination of these in the formation and development of regulations for department consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.~~

"Party" means, for the purposes of Part VIII (9VAC5-170-190 et seq.) of this chapter, a person named in the record who actively participates in the administrative proceeding or offers comments through the public participation process. The term "party" also means the department.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or another legal entity.

"Pollutant" means a substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in ~~§ 9-6.14:7.1~~ § 2.2-4007.01 B of the Administrative Process Act, held to afford people an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Public meeting" means an informal proceeding conducted by the department in conjunction with the notice of intended regulatory action to afford people an opportunity to submit comments relative to intended regulatory actions.

"Public participation process" means any element of a board or department decision making process that involves the use of a public meeting, public hearing or evidentiary hearing.

"Regulations of the board" means regulations adopted by the State Air Pollution Control Board under a provision of the Code of Virginia.

"Source" means one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. An activity by a person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Special order" means an order of the board issued:

1. Under the provisions of § 10.1-1309 of the Code of Virginia:

a. To owners who are permitting or causing air pollution to cease and desist from the pollution;

b. To owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the board, to construct facilities in accordance with or otherwise comply with the approved plan;

c. To owners who have violated or failed to comply with the terms and provisions of an order or directive issued by the board to comply with the terms and provisions;

d. To owners who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from the contravention and to comply with the air quality standards and policies; and

e. To require an owner to comply with the provisions of the Virginia Air Pollution Control Law and a decision of the board; or

2. Under the provisions of § 10.1-1309.1 of the Code of Virginia, which require that an owner file with the board a plan to abate, control, prevent, remove, or contain a substantial and imminent threat to public health or the

environment that is reasonably likely to occur if the source ceases operations.

"Variance" means the temporary exemption of an owner or other person from the regulations of the board, or a temporary change in the regulations of the board as they apply to an owner or other person.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Virginia Motor Vehicle Emissions Control Law" means Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

"Virginia Register Act" means ~~Chapter 1.2 (§ 9-6.15 et seq.) of Title 9~~ Chapter 41 (§ 2.2-4100 et seq.) of Title 2.2 of the Code of Virginia.

9VAC5-170-40. Hearings and proceedings.

A. Four types of proceedings are used in the administration of the board's regulatory program.

1. A public hearing is held in each of two situations, as explained below.

a. A public hearing is required before considering regulations in accordance with § 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to ~~§ 9-6.14:7.1~~ § 2.2-4007.01 B of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1308 of the Virginia Air Pollution Control Law, and to ~~Part IV (9VAC5-170-90 et seq.) of this chapter~~ 9VAC5-5 (Public Participation Guidelines).

b. A public hearing is required before considering variances and amendments to and revocation of variances in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of 9VAC5-170-140.

2. An informal fact finding is used to negotiate and to make case decisions. The procedure for an informal fact finding shall conform to ~~§ 9-6.14:11~~ § 2.2-4019 of the Administrative Process Act.

3. A formal hearing is held in each of two situations.

a. A formal hearing is held for the enforcement or review of orders and permits and for the enforcement of regulations in accordance with § 10.1-1307 D and § 10.1-1322 A of the Virginia Air Pollution Control Law. The procedures for this type of hearing shall conform to ~~§ 9-6.14:12~~ § 2.2-4020 of the Administrative Process Act, except as modified by § 10.1-1307 D and F of the Virginia Air Pollution Control Law.

b. A formal hearing is held for special orders or emergency special orders for the enforcement or review of orders and permits and for the enforcement of regulations in accordance with § 10.1-1309 of the Virginia Pollution Control Law. The procedures for this type of hearing shall conform to ~~§ 9-6.14:12~~ § 2.2-4020 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1309 of the Virginia Air Pollution Control Law.

4. An evidentiary hearing may be held for the making of regulations. The procedure for this type of hearing shall conform to ~~§ 9-6.14:8~~ § 2.2-4009 of the Administrative Process Act.

B. The board may adopt policies and procedures to supplement the statutory procedural requirements for the various hearings and proceedings cited in subsection A of this section.

C. Records of hearings and proceedings may be kept in one of the following forms:

1. Oral statements or testimony at a public hearing will be stenographically or electronically recorded, and may be transcribed to written form.

2. Oral statements or testimony at an informal fact finding will be stenographically or electronically recorded, and may be transcribed to written form.

3. Formal hearings and evidentiary hearings will be recorded by a court reporter or electronically recorded for transcription to written form.

D. Availability of records of hearings and proceedings shall be as follows:

1. A copy of the electronic recording or the transcript of a public hearing, if transcribed, will be provided within a reasonable time to anyone upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

2. A copy of the electronic recording or the transcript of an informal fact finding, if transcribed, will be provided within a reasonable time to anyone upon receipt of a written request and payment of cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

3. Anyone desiring a copy of the transcript of a formal hearing or evidentiary hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation will be paid by the person making the request.

Part III
Regulations and Orders

9VAC5-170-80. Establishment of regulations and orders.

A. Regulations of the board shall be adopted, amended or repealed in accordance with the provisions of the enabling laws, Articles 1 ~~(§ 9-6.14:4.1 et seq.)~~ (§ 2.2-4000 et seq.) and 2 ~~(§ 9-6.14:7.1 et seq.)~~ (§ 2.2-4006 et seq.) of the Administrative Process Act, and ~~Part IV (9VAC5-170-90 et seq.) of this chapter~~ 9VAC5-5 (Public Participation Guidelines).

B. Regulations, amendments, and repeals shall become effective as provided in ~~§ 9-6.14:9.3~~ § 2.2-4015 of the Administrative Process Act.

C. If necessary in an emergency situation, the board may adopt, amend or stay a regulation as an exclusion under ~~§ 9-6.14:4.1~~ § 2.2-4011 of the Administrative Process Act, but the regulation shall remain effective no longer than one year unless readopted following the requirements of subsection A of this section. The provisions of this subsection are not applicable to emergency special orders of the board; these orders are subject to the provisions of subsection E of this section.

D. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout the regulations of the board, documents of the types specified below have been incorporated by reference.

1. United States Code.

2. Code of Virginia.

3. Code of Federal Regulations.

4. Federal Register.

5. Technical and scientific reference documents.

Additional information on specific documents which have been incorporated by reference and on the availability of these documents may be found in the specific regulations of the board which incorporate the documents.

E. Orders, special orders, and emergency special orders may be issued pursuant to § 10.1-1307 D, § 10.1-1309, or § 10.1-1309.1 of the Virginia Air Pollution Control Law.

Part IV
~~Public Participation in Regulation Development~~ (Repealed.)

9VAC5-170-90. ~~General provisions.~~ (Repealed.)

~~A. The procedures in 9VAC5-170-100 shall be used for soliciting the input of interested people in the formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This part does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).~~

~~B. The failure of a person to receive a notice or copies of a document provided under these procedures shall not affect the validity of a regulation.~~

~~C. Anyone may petition the board for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:~~

~~1. Name of petitioner.~~

~~2. Petitioner's mailing address and telephone number.~~

~~3. Petitioner's interest in the proposed action.~~

~~4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations.~~

~~5. Statement of need and justification for the proposed action.~~

~~6. Statement of impact on the petitioner and other affected people.~~

~~7. Supporting documents, as applicable.~~

~~The board shall provide a written response to a petition within 180 days from the date the petition was received.~~

9VAC5-170-100. ~~Public participation procedures.~~ (Repealed.)

~~A. The department shall establish and maintain a list consisting of people expressing an interest in the adoption, amendment or repeal of regulations. Anyone wishing to be placed on the list may do so by writing the department. In addition, the department, at its discretion, may add to the list any person, organization, or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from the list at the request of the individual and organization, or at the discretion of the department when mail is returned as undeliverable.~~

~~B. Whenever the board so directs or upon its own initiative, the department may commence the regulation adoption process and proceed to draft a proposal according to these procedures.~~

~~C. The department shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:~~

~~1. Proceed without using the participatory approach if the board specifically authorizes the department to proceed without using the participatory approach.~~

~~2. Include in the notice of intended regulatory action a statement inviting comment on whether the department~~

should use the participatory approach to assist the department in the development of the proposal. If the department receives written responses from at least five people during the associated comment period indicating that the department should use the participatory approach, the department will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be used.

D. The department shall issue a notice of intended regulatory action whenever it considers the adoption, amendment or repeal of a regulation.

1. The notice of intended regulatory action shall include at least the following:

a. A description of the subject matter of the planned regulation.

b. A description of the intent of the planned regulation.

c. A brief statement as to the need for regulatory action.

d. A brief description of alternatives available, if any, to meet the need.

e. A request for comments on the intended regulatory action, to include ideas to assist the department in the development of a proposal.

f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

g. A statement of the department's intent to hold at least one public hearing on the proposed regulation after it is published in the Virginia Register of Regulations.

h. A statement inviting comment on whether the department should use the participatory approach to assist the department in the development of a proposal. Including this statement shall be required only when the department makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The department shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of a regulation unless the board specifically authorizes the department to proceed without holding a public meeting. In those cases where a public meeting will be held, the notice of intended regulatory action shall also include the date, not to be less than 30 days after publication in the Virginia Register of Regulations, time, and place of the public meeting.

3. The public comment period for notices of intended regulatory action under this section shall be no less than 30 days after publication of the notice of intended regulatory action in the Virginia Register of Regulations.

E. The department shall disseminate the notice of intended regulatory action to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations.

2. Distribution by mail to people on the list established under subsection A of this section.

F. After consideration of public input, the department may complete the draft proposed regulation and the supporting documentation required for review. If the participatory approach is being used, the draft proposed regulation shall be developed in consultation with the participants. A summary or copies of the comments received in response to the notice of intended regulatory action shall be distributed to the participants during the development of the draft proposed regulation. This summary or copies of the comments received in response to the notice of intended regulatory action shall also be distributed to the board.

G. Upon approval of the draft proposed regulation by the board, the department shall publish a notice of public comment and the proposal for public comment.

H. The notice of public comment shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, the location where copies of the proposal may be obtained, and the name, address, and telephone number of the individual to contact for further information about the proposed regulation.

2. A request for comments on the costs and benefits of the proposal.

3. The identity of a locality particularly affected by the proposed regulation.

4. A statement that an analysis of the following has been conducted by the department and is available to the public upon request:

a. A statement of purpose: the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.

b. A statement of estimated impact:

(1) Projected number and types of regulated entities or people affected.

(2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the department is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the proposed regulation. Qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the department for implementation and enforcement.

~~(4) Beneficial impact the regulation is designed to produce.~~

~~c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.~~

~~d. An estimate of the impact of the proposed regulation upon small businesses, as defined in § 9-199 of the Code of Virginia, or organizations in Virginia.~~

~~e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements together with the reason why the more restrictive provisions are needed.~~

~~f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the department believes that the proposed regulation is the least burdensome alternative to the regulated entities that fully meets the stated purpose of the proposed regulation.~~

~~g. A schedule setting forth when, after the effective date of the regulation, the department will evaluate it for effectiveness and continued need.~~

~~5. The date, time, and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Administrative Process Act to receive comments on the proposed regulation. The public hearing may be held at any time during the public comment period and, whenever practicable, no less than 15 days prior to the close of the public comment period. The public hearing may be held in the location which the department determines will best facilitate input from interested people. (In those cases in which the department elects to conduct an evidentiary hearing, the notice shall indicate that the hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.)~~

~~I. The public comment period shall close no less than 60 days after publication of the notice of public comment in the Virginia Register of Regulations.~~

~~J. The department shall disseminate the notice of public comment to the public via the following:~~

~~1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations.~~

~~2. Distribution by mail to people on the list established under subsection A of this section.~~

~~K. The department may publish a notice of the hearing and comment period in any newspaper as it deems appropriate.~~

~~L. The department shall prepare a summary of comments received in response to the notice of public comment and the department's response to the comments received. The department shall send a draft of the summary of comments to public commenters on the proposed regulation at least five days before final adoption of the regulation. The department shall submit the summary and the department response and, if requested, submit the full comments to the board. The summary, the department response, and the comments shall become a part of the department file and after final action on the regulation by the board, made available, upon request, to interested people.~~

~~M. If the department determines that the process to adopt, amend or repeal a regulation should be terminated after approval of the draft proposed regulation by the board, the department shall present to the board for its consideration a recommendation and rationale for the withdrawal of the proposed regulation.~~

~~N. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.~~

9VAC5-170-110. ~~Transition.~~ (Repealed.)

~~A. Regulatory actions for which a notice of intended regulatory action has been published in the Virginia Register of Regulations prior to May 16, 1994, shall be processed in accordance with Appendix E of VR 120-01 as revised by the emergency amendments in effect from June 29, 1993, to June 28, 1994, unless sooner modified or vacated or superseded by permanent regulations.~~

~~B. This part when effective shall supersede and repeal Appendix E of VR 120-01 as revised by the emergency amendments which became effective on June 29, 1993. Regulatory actions for which a notice of intended regulatory action has not been published in the Virginia Register of Regulations prior to May 16, 1994, shall be processed in accordance with this part.~~

VA.R. Doc. No. R09-1639; Filed October 22, 2008, 10:49 a.m.

DEPARTMENT OF ENVIRONMENTAL QUALITY

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: **9VAC15-10. Public Participation Guidelines (repealing 9VAC15-10-10 through 9VAC15-10-40).**

9VAC15-11. Public Participation Guidelines (adding 9VAC15-11-10 through 9VAC15-11-110).

Statutory Authority: §§ 2.2-4007.02, 58.1-3661, and 62.1-195.1 of the Code of Virginia.

Effective Date: January 1, 2009.

Agency Contact: 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.

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 actions; (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

9VAC15-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department of Environmental Quality. 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).

9VAC15-11-20. 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 Environmental Quality, 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

9VAC15-11-30. 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.

9VAC15-11-40. 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 9VAC15-11-30, 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 reproposed, 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

9VAC15-11-50. 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 reproposed 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.

9VAC15-11-60. 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.

9VAC15-11-70. 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.

9VAC15-11-80. 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.

9VAC15-11-90. 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.

9VAC15-11-100. 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.

9VAC15-11-110. 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. R09-1444; Filed October 22, 2008, 10:47 a.m.

STATE WATER CONTROL 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: **9VAC25-10. Public Participation Guidelines (repealing 9VAC25-10-10 through 9VAC25-10-40).**

9VAC25-11. Public Participation Guidelines (adding 9VAC25-11-10 through 9VAC25-11-110).

Statutory Authority: §§ 2.2-4007.02 and 62.1-44.15 of the Code of Virginia.

Effective Date: January 1, 2009.

Agency Contact: 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.

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 actions; (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

9VAC25-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the State Water Control 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).

9VAC25-11-20. 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 State Water Control 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

9VAC25-11-30. 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.

9VAC25-11-40. 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 9VAC25-11-30, 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 reproposed, 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

9VAC25-11-50. 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 reproposed 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.

9VAC25-11-60. 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.

9VAC25-11-70. 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.

9VAC25-11-80. 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.

9VAC25-11-90. 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.

9VAC25-11-100. 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.

9VAC25-11-110. 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. R09-1446; Filed October 22, 2008, 10:47 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

Titles of Regulations: **9VAC25-151. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity (amending 9VAC25-151-10, 9VAC25-151-40 through 9VAC25-151-290, 9VAC25-151-310 through 9VAC25-151-370).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123 and 124.

Public Hearing Information:

December 16, 2008 - 2 p.m. - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA

Public Comments: Public comments may be submitted until 5 p.m. on January 9, 2009.

Agency Contact: Burton R. Tuxford, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23510, telephone (804) 698-4086, FAX (804) 698-4032, or email brtuxford@deq.virginia.gov.

Summary:

This regulation will reissue the existing general permit for industrial activity storm water discharges that will expire on June 30, 2009. This draft is generally modeled after EPA's proposed 2006 Multi-Sector General Permit. The significant revisions to the regulation are as follows:

1. Registration Statement and SWPPP. Clarified that the SWPPP must be prepared and implemented prior to the submittal of the registration statement, and that existing permittees who intend to continue coverage under this GP must review and update the SWPPP to meet any new permit requirements prior to submitting their registration statement.

2. General permit, Part I A - Effluent Limitations, Monitoring Requirements and Special Conditions.

a. Monitoring. Set the monitoring periods for benchmark monitoring, and effluent limitation monitoring (including coal pile runoff monitoring) to (1) July 1, 2009, to December 31, 2009; and (2) January 1 to December 31 for each of the remaining years of the permit term. Required DMRs to be submitted by January 30 for both benchmark monitoring and effluent limitation monitoring.

b. Added monitoring requirements for facilities subject to TMDL waste load allocations. Facilities will be given written notification from DEQ that they are subject to

TMDL monitoring. Required the monitoring to be conducted at least semi-annually. Required TMDL WLA monitoring to be submitted by each July 30th and January 30th.

c. Monitoring waivers. Deleted the alternative certification of "not present" or "no exposure" to be consistent with EPA's proposed 2006 MSGP.

d. Corrective Actions. Added a section that describes actions that the permittee must take if (a) benchmark monitoring results exceed benchmark monitoring concentrations; (b) routine facility inspections, comprehensive site compliance evaluations, facility inspections, or other observations result in discovery of a deficiency; or (c) there is an exceedance of an effluent limitation, TMDL wasteload allocation or a water quality standard. For exceedances of an effluent limitation, TMDL wasteload allocation or a water quality standard, the permittee must conduct follow-up monitoring and reporting on the schedule set in the permit until the results indicate that the limitation/allocation/standard is no longer being exceeded. Required follow-up monitoring to be submitted on a DMR no later than 30 days after the results are received.

e. Special Conditions

(1) Salt storage piles. Added a requirement for all salt storage piles to be located on an impervious surface, and a requirement that all runoff from the pile, and/or runoff that comes in contact with salt, including under drain systems, be collected and contained within a basin lined with concrete or other impermeable materials, and that the lined basin be bermed and sized to contain runoff resulting from a 24-hour 25-year storm event. Salt contaminated stormwater is not allowed to be discharged directly to the ground or to state waters.

(2) Discharges to Waters Subject to TMDL WLA's. Added a special condition requiring facilities that are an identified source of the pollutant of concern to TMDL waters (board established and EPA-approved prior to the term of the permit) to incorporate measures and controls into their SWPPP to address the TMDL requirements, and any waste load allocations that impact the facility. DEQ will notify the permittee that they are subject to the TMDL requirements. If the TMDL establishes a specific WLA that applies to the facility's discharges, the permittee must address that allocation in the SWPPP, perform TMDL monitoring, and implement measures to meet the allocation.

3. General permit, Part III - Storm Water Pollution Prevention Plan.

a. Changed the deadline to update and implement any revisions to the SWPPP to "prior to submitting the registration statement."

b. Maintenance. Added a requirement that storm water BMPs be observed during active operation to ensure they are operating properly.

c. Nonstorm Water Discharges. Added a statement that all nonstorm water discharges are subject to all the provisions of this permit, including numeric effluent limitations, benchmarks and monitoring requirements.

d. Comprehensive Site Compliance Evaluation. Added the following things for facility personnel to evaluate: (i) evidence of pollutants discharging to surface waters at all facility outfalls, and the condition of and around the outfall, including flow dissipation measures to prevent scouring; (ii) review of training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of BMPs; and (iii) certification of outfall evaluation for unauthorized discharges (this had been in the Part III C nonstorm water discharges section). Changed this to an annual certification. Removed the provision allowing the permittee to skip the certification if they previously did a certification and believed nothing had changed at the facility. If the permittee fails to do the certification, they must notify DEQ of the reason within 14 days after completion of the annual site compliance evaluation.

e. SWPPP Modifications. Deleted the provision that allowed the permittee to use the annual site compliance evaluation to satisfy a routine facility inspection where the schedules overlapped.

4. General permit, Part IV - Sector Specific Permit Requirements.

a. Added benchmark monitoring for TSS to all sectors that had benchmark monitoring in the previous permit if they didn't already have TSS monitoring.

b. Sector A - Timber Products. Added benchmark monitoring for Phenols to "Wood Preserving Facilities" (SIC 2491).

c. Sector C - Chemical and Allied Products. Added benchmark monitoring for Zinc to "Industrial Inorganic Chemicals Facilities" (SIC 2812-2819)

d. Sector F - Primary Metals. Changed the routine facility inspection frequency from quarterly to monthly.

e. Sector G - Metal Mining. Added the following to the description of covered discharges: (1) storm water discharges from exploration and development of metal mining and/or ore dressing facilities; and (2) storm water discharges from facilities at mining sites undergoing reclamation. Added a section on "Clearing,

Grading and Excavation Activities". Added a section for "Termination of permit coverage."

f. Sector I - Oil and Gas Extraction and Refining. Changed the routine facility inspection frequencies to monthly. Added benchmark monitoring for Lead, Nickel, Zinc, TKN, Total Nitrogen, and TSS to "Oil Refining Facilities" (SIC 2911).

g. Sector M - Automobile Salvage Yards. Added mercury switches to the list of things to inspect for leaks, and to train personnel on the proper handling of.

h. Sector N - Scrap Recycling and Waste Recycling Facilities. Added requirements for mercury switch removal, inspection and spill clean-up. For scrap recycling and waste recycling facilities (both types), changed the inspection frequency from quarterly to monthly. For facilities engaged in "Ship Dismantling, Marine Salvaging and Marine Wrecking" (SIC 4499), added benchmark monitoring for Aluminum, Cadmium, Chromium, Iron, Lead and Zinc, and TSS.

i. Sector P - Land Transportation and Warehousing. Added benchmark monitoring for TPH and TSS.

j. Sector R - Ship and Boat Building or Repair Yards. Added benchmark monitoring for TSS.

k. Sector S - Air Transportation. Added benchmark monitoring for COD.

l. Sector U - Food and Kindred Products. Changed the routine facility inspection frequency to monthly. Added benchmark monitoring for BOD_5 and TSS to "Dairy Products Facilities" (SIC 2021-2026).

m. Sector Y - Rubber Product Manufacturing Facilities. Added benchmark monitoring for Lead.

n. Sector AC - Electronic, Electrical Equipment and Components, Photographic and Optical Goods. Added benchmark monitoring for Copper, Lead and TSS to "Electronic and Electrical Equipment and Component Facilities" (Except Computers) (SIC 3612-3699).

o. Sector AD - Nonclassified Facilities/Storm Water Discharges Designated by the Board. Added benchmark monitoring for TSS.

9VAC25-151-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the VPDES Permit Regulation (9VAC25-31) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Coal pile runoff" means the rainfall runoff from or through any coal storage pile.

"Colocated industrial activity" means when a facility has industrial activities being conducted on-site that are described under more than one of the industrial sectors of 9VAC25-151-90 through 9VAC25-151-380.

"Commercial treatment and disposal facilities" means facilities that receive, on a commercial basis, any produced hazardous waste (not their own) and treat or dispose of those wastes as a service to the generators. Such facilities treating or disposing exclusively residential hazardous wastes are not included in this definition.

"Control measure" means any best management practice or other method (including effluent limitations) used to prevent or reduce the discharge of pollutants to surface waters.

"Inactive landfill" means a landfill that, on a permanent basis, will no longer receive waste and has completed closure in accordance with any applicable federal, state, or local requirements.

"Industrial activity" - the following categories of facilities are considered to be engaging in "industrial activity":

(1) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N ~~(2002)~~ (2007) (except facilities with toxic pollutant effluent standards which are exempted under category (10) of this definition);

(2) Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget (OMB) SIC Manual, 1987);

(3) Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) ~~(2002)~~ (2007) because the performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material,

intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, benefication, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

(4) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.);

(5) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this ~~definition)~~ definition, and debris/wastes from Department of Conservation and Recreation Virginia Stormwater Management Program (VSMP) regulated construction activities/sites) including those that are subject to regulation under Subtitle D of RCRA;

(6) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification Codes 5015 and 5093 (OMB SIC Manual, 1987);

(7) Steam electric power generating facilities, including coal handling sites;

(8) Transportation facilities classified as SIC Codes 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or which are otherwise identified under categories 1 through 7 or 9 and 10 of this definition are associated with industrial activity;

(9) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that is located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved POTW pretreatment program under 9VAC25-31. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 9VAC25-31-420 through 9VAC25-31- 720;

(10) Facilities under SIC Codes 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987).

"Industrial storm water" means storm water runoff associated with the definition of "storm water discharge associated with industrial activity."

"Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

~~"Large and medium municipal separate storm sewer system" means all municipal separate storm sewers that are located in the following municipalities: the City of Norfolk; the City of Virginia Beach; Fairfax County; the City of Chesapeake; the City of Hampton; Prince William County; Arlington County; Chesterfield County; Henrico County; the City of Newport News; and the City of Portsmouth.~~

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters of the state; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW).

"No exposure" means all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Section 313 water priority chemicals" means a chemical or chemical categories which: (i) are listed at 40 CFR 372.65 ~~(2002)~~ (2007) pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986) (42 USC § 11001 et

seq.); (ii) are present at or above threshold levels at a facility subject to EPCRA § 313 reporting requirements; and (iii) that meet at least one of the following criteria: (a) are listed in Appendix D of 40 CFR Part 122 ~~(2002)~~ (2007) on either Table II (Organic priority pollutants), Table III (Certain metals, cyanides and phenols) or Table V (Certain toxic pollutants and hazardous substances); (b) are listed as a hazardous substance pursuant to § 311(b)(2)(A) of the Clean Water Act at 40 CFR 116.4 ~~(2002)~~ (2007); or (c) are pollutants for which EPA has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.); any chemical the facility is required to report pursuant to EPCRA § 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Significant spills" includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 ~~(2002)~~ (2007) and 40 CFR 117.21 ~~(2002))~~ (2007)) or § 102 of CERCLA (see 40 CFR 302.4 ~~(2002))~~ (2007)).

~~"Small municipal separate storm sewer system" or "Small MS4" means all separate storm sewers that are: (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under subsection 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems, or designated under 9VAC25-31-120 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.~~

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

"Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

9VAC25-151-40. Effective date of the permit.

This general permit will become effective on July 1, ~~2004~~ 2009. This general permit will expire on June 30, ~~2009~~ 2014.

9VAC25-151-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge storm water associated with industrial activity (as defined in this regulation) to surface waters of the Commonwealth of Virginia provided that the owner files the registration statement of 9VAC25-151-60, pays any fees required by 9VAC25-20, receives a copy of the general permit, and complies with the requirements of 9VAC25-151-70 et seq. and provided that:

1. Facilities with colocated industrial activities on-site shall comply with all applicable effluent limitations, monitoring and pollution prevention plan requirements of each section of 9VAC25-151-70 et seq. in which a colocated industrial activity is described;

2. Storm water discharges associated with industrial activity that are mixed with other discharges (both storm water and nonstorm water) requiring a VPDES permit are authorized by this permit, provided that the owner obtains coverage under this VPDES general permit for the industrial activity discharges, and a VPDES general or individual permit for the other discharges. The owner shall

comply with the terms and requirements of each permit obtained that authorizes any component of the discharge;

3. The storm water discharges authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the combined discharge is in compliance with this permit; and

4. Authorized nonstorm water discharges. The following ~~nonstorm~~ "nonstorm water" discharges are authorized by this permit~~, provided the nonstorm water component of the facility's discharge is in compliance with 9VAC25-151-70, Part III D 2~~:

a. Discharges from fire fighting activities;

b. Fire hydrant flushings;

c. Potable water including water line flushings;

d. Uncontaminated air conditioning or compressor condensate (excluding air compressors);

e. Irrigation drainage;

f. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with manufacturer's instructions;

g. Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);

h. Routine external building wash down that does not use detergents;

i. Uncontaminated ground water or spring water;

j. Foundation or footing drains where flows are not contaminated with process materials~~ such as solvents~~; and

k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

B. Limitations on coverage.

1. The owner shall not be authorized to discharge under this general permit if the owner has been required to obtain an individual permit pursuant to 9VAC25-31-170 B;

2. The owner shall not be authorized by this general permit to discharge to state waters specifically named in other board regulations or policies which prohibit such discharges;

3. The following storm water discharges associated with industrial activity are not authorized by this permit:

a. Discharges that are located at a facility where a VPDES permit has been terminated (other than at the request of the permittee) or denied;

~~b. Discharges that the director determines cause, or may reasonably be expected to cause, or be contributing to a violation of a water quality standard;~~

~~c.~~ b. Discharges subject to ~~storm water~~ effluent limitation guidelines, not described under ~~9VAC25-151-90 et seq.~~ 9VAC25-151-70, Table 70-2; and

~~d. Discharges to waters for which a "total maximum daily load" (TMDL) allocation has been established by the board and approved by EPA unless the storm water pollution prevention plan (SWPPP) developed by the owner incorporates measures and controls that are consistent with the assumptions and requirements of such TMDL. The SWPPP must incorporate any conditions applicable to discharges from the facility that are necessary for consistency with the assumptions and requirements of the TMDL. If a specific numeric wasteload allocation has been established that would apply to discharges from the facility, the owner must incorporate that allocation into the SWPPP and implement necessary steps to meet that allocation; and~~

~~e.~~ c. Discharges that do not comply with Virginia's antidegradation policy for water quality standards under ~~9VAC25-260-5 et seq. are not authorized by this permit~~ 9VAC25-260-30.

4. Facilities covered. Permit eligibility is limited to discharges from facilities in the "sectors" of industrial activity based on Standard Industrial Classification (SIC) codes and Industrial Activity codes summarized in Table 50-1. References to "sectors" in this permit refer to these sectors.

5. Storm water discharges associated with construction activity that are regulated under the Department of Conservation and Recreation VSMP permit program are not authorized by this permit.

TABLE 50-1.
SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT.

SIC Code or Activity Code	Activity Represented
Sector A: Timber Products	
2411	Log Storage and Handling (Wet deck storage areas are only authorized if no chemical additives are used in the spray water or applied to the logs).

2421	General Sawmills and Planning Mills.
2426	Hardwood Dimension and Flooring Mills.
2429	Special Product Sawmills, Not Elsewhere Classified.
2431-2439 (except 2434 - see Sector W)	Millwork, Veneer, Plywood, and Structural Wood.
2441, 2448, 2449	Wood Containers.
2451, 2452	Wood Buildings and Mobile Homes.
2491	Wood Preserving.
2493	Reconstituted Wood Products.
2499	Wood Products, Not Elsewhere Classified.
Sector B: Paper and Allied Products	
2611	Pulp Mills.
2621	Paper Mills.
2631	Paperboard Mills.
2652-2657	Paperboard Containers and Boxes.
2671-2679	Converted Paper and Paperboard Products, Except Containers and Boxes.
Sector C: Chemical and Allied Products	
2812-2819	Industrial Inorganic Chemicals.
2821-2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Manmade Fibers Except Glass.
2833-2836	Medicinal Chemicals and Botanical Products; Pharmaceutical Preparations; In Vitro and In Vivo Diagnostic Substances; Biological Products, Except Diagnostic Substances.
2841-2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations.
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products.
2861-2869	Industrial Organic Chemicals.
2873-2879	Agricultural Chemicals.
2891-2899	Miscellaneous Chemical Products.
3952 (limited to list)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors.
Sector D: Asphalt Paving and Roofing Materials and Lubricants	
2951, 2952	Asphalt Paving and Roofing Materials.
2992, 2999	Miscellaneous Products of Petroleum and Coal.
Sector E: Glass Clay, Cement, Concrete, and Gypsum Products	
3211	Flat Glass.
3221, 3229	Glass and Glassware, Pressed or Blown.
3231	Glass Products Made of Purchased Glass.
3241	Hydraulic Cement.
3251-3259	Structural Clay Products.
3261-3269	Pottery and Related Products.
~~3271-3275 (except 3273)~~ 3274, 3275	Concrete, Gypsum and Plaster Products, Except: Concrete Block and Brick; Concrete Products, Except Block and Brick; and Ready-mixed Concrete Facilities (SIC 3271-3273).
3281	Cut Stone and Stone Products
3291-3299	Abrasive, Asbestos, and Miscellaneous Non-metallic Mineral Products.
Sector F: Primary Metals	
3312-3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills.
3321-3325	Iron and Steel Foundries.
3331-3339	Primary Smelting and Refining of Nonferrous Metals.

3341	Secondary Smelting and Refining of Nonferrous Metals.
3351-3357	Rolling, Drawing, and Extruding of Nonferrous Metals.
3363-3369	Nonferrous Foundries (Castings).
3398, 3399	Miscellaneous Primary Metal Products.
Sector G: Metal Mining (Ore Mining and Dressing)	
1011	Iron Ores.
1021	Copper Ores.
1031	Lead and Zinc Ores.
1041, 1044	Gold and Silver Ores.
1061	Ferroalloy Ores, Except Vanadium.
1081	Metal Mining Services.
1094, 1099	Miscellaneous Metal Ores.
Sector H: Coal Mines and Coal Mining Related Facilities	
1221-1241	Coal Mines and Coal Mining-Related Facilities.
Sector I: Oil and Gas Extraction and Refining	
1311	Crude Petroleum and Natural Gas.
1321	Natural Gas Liquids.
1381-1389	Oil and Gas Field Services.
2911	Petroleum Refineries.
Sector J: Mineral Mining and Dressing Facilities (SIC 1411-1499) are not authorized under this permit.	
Sector K: Hazardous Waste Treatment, Storage, or Disposal Facilities	
HZ	Hazardous Waste Treatment Storage or Disposal.
Sector L: Landfills and Land Application Sites	
LF	Landfills, Land Application Sites, and Open Dumps.
Sector M: Automobile Salvage Yards	
5015	Automobile Salvage Yards.
Sector N: Scrap Recycling Facilities	
5093	Scrap Recycling Facilities.
4499 (limited to list)	Dismantling Ships, Marine Salvaging, and Marine Wrecking - Ships For Scrap
Sector O: Steam Electric Generating Facilities	
SE	Steam Electric Generating Facilities.
Sector P: Land Transportation and Warehousing	
4011, 4013	Railroad Transportation.
4111-4173	Local and Highway Passenger Transportation.
4212-4231	Motor Freight Transportation and Warehousing.
4311	United States Postal Service.
5171	Petroleum Bulk Stations and Terminals.
Sector Q: Water Transportation	
4412-4499 (except 4499 facilities as specified in Sector N)	Water Transportation.
Sector R: Ship and Boat Building or Repairing Yards	
3731, 3732	Ship and Boat Building or Repairing Yards.
Sector S: Air Transportation	
4512-4581	Air Transportation Facilities.
Sector T: Treatment Works	
TW	Treatment Works.
Sector U: Food and Kindred Products	
2011-2015	Meat Products.
2021-2026	Dairy Products.
2032-2038	Canned, Frozen and Preserved Fruits, Vegetables and Food Specialties.
2041-2048	Grain Mill Products.
2051-2053	Bakery Products.
2061-2068	Sugar and Confectionery Products.
2074-2079	Fats and Oils.
2082-2087	Beverages.

2091-2099	Miscellaneous Food Preparations and Kindred Products.
2111-2141	Tobacco Products.
Sector V: Textile Mills, Apparel, and Other Fabric Product Manufacturing, Leather and Leather Products	
2211-2299	Textile Mill Products.
2311-2399	Apparel and Other Finished Products Made From Fabrics and Similar Materials.
3131-3199 (except 3111 - see Sector Z)	Leather and Leather Products, except Leather Tanning and Finishing.
Sector W: Furniture and Fixtures	
2434	Wood Kitchen Cabinets.
2511-2599	Furniture and Fixtures.
Sector X: Printing and Publishing	
2711-2796	Printing, Publishing, and Allied Industries.
Sector Y: Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries.	
3011	Tires and Inner Tubes.
3021	Rubber and Plastics Footwear.
3052, 3053	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting.
3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified.
3081-3089	Miscellaneous Plastics Products.
3931	Musical Instruments.
3942-3949	Dolls, Toys, Games and Sporting and Athletic Goods.
3951-3955 (except 3952 facilities as specified in Sector C)	Pens, Pencils, and Other Artists' Materials.
3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal.
3991-3999	Miscellaneous Manufacturing Industries.
Sector Z: Leather Tanning and Finishing	
3111	Leather Tanning, Currying and Finishing.
Sector AA: Fabricated Metal Products	
3411–3499	Fabricated Metal Products, Except Machinery and Transportation Equipment.
3911–3915	Jewelry, Silverware, and Plated Ware
Sector AB: Transportation Equipment, Industrial or Commercial Machinery	
3511-3599 (except 3571-3579 - see Sector AC)	Industrial and Commercial Machinery (Except Computer and Office Equipment).
3711-3799 (except 3731, 3732 - see Sector R)	Transportation Equipment (Except Ship and Boat Building and Repairing).
Sector AC: Electronic, Electrical, Photographic, and Optical Goods	
3571-3579	Computer and Office Equipment.
3612-3699	Electronic, Electrical Equipment and Components, Except Computer Equipment.
3812-3873	Measuring, Analyzing and Controlling Instrument; Photographic and Optical Goods.
Sector AD: Nonclassified Facilities/Storm Water Discharges Designated By the Board As Requiring Permits	
N/A	Other Storm Water Discharges Designated By the Board As Needing a Permit (see 9 VAC 25-31-120 A 1 e) or Any Facility Discharging Storm Water Associated With Industrial Activity Not Described By Any of Sectors A-AC. Note: Facilities may not elect to be covered under Sector AD. Only the Director may assign a facility to Sector AD.

C. Conditional exclusion for no exposure. If an owner is covered by this permit, but later is able to file a no exposure certification to be excluded from permitting under 9VAC25-31-120 F, the owner is no longer authorized by nor required to comply with this permit. If the owner is no longer required to have permit coverage due to a no exposure exclusion, the owner is not required to submit a notice of termination.

D. Receipt of this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

9VAC25-151-60. Registration statement and Storm Water Pollution Prevention Plan (SWPPP).

A. ~~Deadlines for submitting registration statement.~~ The owner of a facility with storm water discharges associated with industrial activity who is proposing to be covered by this general permit shall ~~file~~ submit a ~~complete and accurate~~ VPDES general permit registration statement in accordance with this chapter. The owner shall prepare and implement a written SWPPP for the facility in accordance with the general permit (9VAC25-151-70 et seq.) prior to submitting the registration statement. Owners of facilities that were covered under the 2004 Industrial Storm Water General Permit who intend to continue coverage under this general permit shall review and update the SWPPP to meet all provisions of the general permit (9VAC25-151-70 et seq.) prior to submitting the registration statement.

B. Deadlines for submitting registration statement.

1. Existing facilities.

a. Owners of facilities that were covered under the ~~1999~~ 2004 Industrial Storm Water General Permit who intend to continue coverage under this general permit shall submit a complete registration statement during the 90-day period prior to July 1, ~~2004~~ 2009.

b. Owners of facilities previously covered by an expiring individual permit for storm water discharges associated with industrial activity may elect to be covered under this general permit by notifying the department at least 180 days prior to the expiration date of the individual permit, and submitting a complete registration statement ~~during the 90-day period~~ at least 30 days prior to the expiration date of the individual permit, but not before April 2, ~~2004~~ 2009.

c. Owners of existing facilities, not currently covered by a VPDES permit, who intend to obtain coverage under this general permit for storm water discharges associated with industrial activity shall submit a complete registration statement by July 1, ~~2004~~ 2009.

2. New facilities. Owners of new facilities who wish to obtain coverage under this general permit shall submit a complete registration statement at least ~~two~~ 30 days prior to the commencement of the industrial activity at the facility.

3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility ~~must~~ shall submit a complete registration statement or a "Change of Ownership" form within 30 days of the ownership change.

4. Late notifications. An owner of a storm water discharge associated with industrial activity is not precluded from submitting a registration statement after the applicable dates provided in ~~9VAC25-151-60 A~~ subdivisions 1 through 3 of this subsection. If a late registration statement is submitted, the owner is only authorized for discharges that occur after permit coverage is granted. The department reserves the right to take appropriate enforcement actions for any unpermitted discharges.

~~5. Additional notification for discharges to municipal separate storm sewer systems. Where the discharge of storm water associated with industrial activity is through a municipal separate storm sewer system (MS4), the owner shall notify the operator of the municipal system receiving the discharge and submit a copy of their registration statement to the municipal system operator.~~

~~B.~~ C. Registration statement contents. The registration statement shall contain the following information:

1. Name, mailing address, email address (where available), and telephone number of the ~~owner applying for permit coverage;~~

a. Property owner of the site;

b. Operator applying for permit coverage (if different than subdivision 1 a of this subsection);

c. Responsible party requesting permit coverage, and who will be legally responsible for compliance with this permit;

2. Name (or other identifier), address, county, contact name, email address (where available), and phone number for the facility for which the registration statement is submitted;

3. Facility ownership status: federal, state, public or private;

4. ~~Name~~ Name(s) of the receiving water(s) that storm water is discharged into;

5. A statement indicating if storm water runoff is discharged to a municipal separate storm sewer system (MS4). Provide the name of the MS4 operator if applicable;

6. VPDES permit numbers for all permits assigned to the facility (including coverage under the ~~1999~~ 2004 Industrial Storm Water General Permit);

7. An indication as to whether this facility discharges storm water runoff from coal storage piles;

~~8. An indication as to whether a storm water pollution prevention plan has been prepared in accordance with the requirements of 9VAC25-151-80 et seq.;~~

~~9. A topographic map or other map that indicates the location of the facility, the location of all storm water discharges, the water body receiving discharge(s) and other surface water bodies within a 1/2 mile radius of the facility~~ 8. A copy of the SWPPP general location map and the SWPPP site map prepared in accordance with 9VAC25-151-80 B 2 b and c (general permit Part III B 2 b and c) and any applicable sector-specific site map requirements. Owners covered under the 2004 Industrial Storm Water General Permit shall update their site map to meet all requirements listed in 9VAC25-151-80 B 2 c (general permit Part III B 2 c) and any applicable sector-specific site map requirements;

~~10.~~ 9. Identification of up to four 4-digit Standard Industrial Classification (SIC) Codes or 2-letter Industrial Activity Codes that best represent the principal products or services rendered by the facility and major colocated activities (2-letter Industrial Activity Codes are: HZ – hazardous waste treatment, storage, or disposal facilities; LF – landfills/disposal facilities that receive or have received any industrial wastes; SE – steam electric power generating facilities; or, TW – treatment works treating domestic sewage);

~~11.~~ 10. Identification of all applicable sectors in this permit (as designated in Table 50-1) that cover the discharges associated with industrial activity from the facility and major colocated activities to be covered under this permit, and the storm water outfalls associated with each industrial sector~~; and~~ .

a. If the facility is a landfill (sector L), indicate the type of landfill (MSWLF (municipal solid waste landfill), CDD (construction debris/demolition), or other), and which outfalls (if any) receive contaminated storm water runoff.

b. If the facility is a timber products operation (sector A), indicate which outfalls receive discharges from wet decking areas;

~~12.~~ 11. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 9VAC25-151-70, Part II K.

D. Where to submit. The registration statement shall be submitted to the DEQ regional office serving the area where the industrial facility is located.

9VAC25-151-65. Termination of permit coverage.

A. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination ~~shall~~ may be filed ~~within 30 days~~ after one or more of the following conditions have been met:

1. Operations have ceased at the facility and there are no longer discharges of storm water associated with industrial activity from the facility.

2. A new owner has assumed responsibility for the facility (NOTE: A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted); or

3. All storm water discharges associated with industrial activity have been covered by an individual VPDES permit.

B. The notice of termination shall contain the following information:

1. Owner's name, mailing address and telephone number;

2. Facility name and location;

3. VPDES Industrial storm water general permit number;

4. The basis for submitting the notice of termination, including:

a. A statement indicating that a new owner has assumed responsibility for the facility;

b. A statement indicating that operations have ceased at the facility and there are no longer discharges of storm water associated with industrial activity from the facility;

c. A statement indicating that all storm water discharges associated with industrial activity have been covered by an individual VPDES permit; or

d. A statement indicating that termination of coverage is being requested for another reason (state the reason).

5. The following certification: "I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual permit, or that I am no longer the owner of the industrial activity, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of

termination, that I am no longer authorized to discharge storm water associated with industrial activity in accordance with the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

C. The notice of termination shall be signed in accordance with 9VAC25-151-70, Part II K.

D. Where to submit. The notice of termination shall be submitted to the DEQ regional office serving the area where the industrial facility is located.

9VAC25-151-70. General permit.

Any owner whose registration statement is accepted by the director will receive the following general permit and shall comply with the requirements therein and be subject to the VPDES Permit Regulation, 9VAC25-31. Facilities with colocated industrial activities shall comply with all applicable monitoring and pollution prevention plan requirements of each industrial activity sector of this chapter in which a colocated industrial activity is described. All pages of 9VAC25-151-70 and 9VAC25-151-80 apply to all storm water discharges associated with industrial activity covered under this general permit. Not all pages of 9VAC25-151-90 et seq. will apply to every permittee. The determination of which pages apply will be based on an evaluation of the regulated activities located at the facility.

General Permit No.: VAR05
Effective Date: July 1, ~~2004~~ 2009
Expiration Date: June 30, ~~2009~~ 2014

GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

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

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of facilities with storm water discharges associated with industrial activity are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in board regulation or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, Part II-Conditions Applicable to All VPDES Permits, Part III-Storm Water Pollution Prevention Plan, and Part IV-Sector-Specific Permit Requirements, as set forth herein.

Part I
Effluent Limitations, Monitoring Requirements and Special Conditions

A. Effluent limitations and monitoring requirements.

There are ~~four~~ three individual and separate categories of monitoring requirements ~~and numeric effluent limitations~~ that a facility may be subject to under this permit: (i) quarterly visual monitoring; (ii) benchmark monitoring of discharges associated with specific industrial activities; and (iii) compliance monitoring for discharges subject to numerical effluent limitations. The monitoring requirements and numeric effluent limitations applicable to a facility depend on the types of industrial activities generating storm water runoff from the facility, and for TMDL monitoring, the location of the facility. Part IV of the permit (9VAC25-151-90 et seq.) identifies monitoring requirements applicable to specific sectors of industrial activity. The permittee ~~must~~ shall review Part I A 1 and Part IV of the permit to determine which monitoring requirements and numeric limitations apply to his facility. Unless otherwise specified, limitations and monitoring requirements under Part I A 1 and Part IV are additive.

Sector-specific monitoring requirements and limitations are applied discharge by discharge at facilities with colocated activities. Where storm water from the colocated activities are commingled, the monitoring requirements and limitations are additive. Where more than one numeric limitation for a specific parameter applies to a discharge, compliance with the more restrictive limitation is required. Where monitoring requirements for a monitoring period overlap (e.g., need to monitor TSS one/year for a limit and also one/year for benchmark monitoring), the permittee may use a single sample to satisfy both monitoring requirements.

1. Types of monitoring requirements and limitations.

a. Quarterly visual monitoring. The requirements and procedures for quarterly visual monitoring are applicable to all facilities covered under this permit, regardless of the facility's sector of industrial activity.

(1) The permittee ~~must~~ shall perform and document a quarterly visual examination of a storm water discharge associated with industrial activity from each outfall, except discharges exempted below (Part I A 1 a (2) and (4), and Part I A 3). ~~Unless another schedule is established in applicable sectors of Part IV (sections of 9VAC25-151-90 et seq.), the examination(s) must~~ The examination(s) shall be made at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December. The visual examination ~~must~~ shall be made during daylight hours (e.g., normal working hours).

If no storm event resulted in runoff from the facility during a monitoring quarter, the permittee is excused from visual monitoring for that quarter provided that documentation is included with the monitoring records indicating that no runoff occurred. The documentation ~~must~~ shall be signed and certified in accordance with Part II K of this permit.

(2) Visual examinations ~~must~~ shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging from the facility. The examination ~~must~~ shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The examination ~~must~~ shall be conducted in a well-lit area. No analytical tests are required to be performed on the samples. All samples (except snowmelt samples) ~~must~~ shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The 72-hour storm interval is waived when the preceding measurable storm did not yield a measurable discharge, or if the permittee is able to document that less than a 72-hour interval is representative for local storm events during the sampling period. Where practicable, the same individual ~~should~~ shall carry out the collection and examination of discharges for the entire permit term. If no qualifying storm event resulted in runoff during daylight hours from the facility during a monitoring quarter, the permittee is excused from visual monitoring for that quarter provided that documentation is included with the monitoring records indicating that no qualifying storm event occurred during daylight hours that resulted in storm water runoff during that quarter. The documentation ~~must~~ shall be signed and certified in accordance with Part II K.

(3) The visual examination reports ~~must~~ shall be maintained on-site with the Storm Water Pollution Prevention Plan (SWPPP). The report ~~must~~ shall include the outfall location, the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(4) Inactive and unstaffed sites: When the permittee is unable to conduct visual storm water examinations at an inactive and unstaffed site, a waiver of the monitoring requirement may be exercised as long as the facility remains inactive and unstaffed, and there are no industrial materials or activities exposed to storm water. If this waiver is exercised, the permittee ~~must~~ shall maintain a certification with the SWPPP stating that the site is inactive and unstaffed, there are no industrial materials or activities exposed to storm water, and that performing visual examinations during a qualifying event is not feasible. The waiver ~~must~~ shall be signed and certified in accordance with Part II K.

(5) Representative outfalls - essentially identical discharges. If the facility has two or more outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and storm water management practices occurring within the drainage areas of the outfalls, the permittee may conduct visual monitoring on the effluent of just one of the outfalls and report that the quantitative data also applies to the substantially identical outfall(s). The permittee shall include the following information in the SWPPP:

(a) The locations of the outfalls;

(b) Why the outfalls are expected to discharge substantially identical effluents, including evaluation of monitoring data, where available;

(c) Estimates of the size of the drainage area (in square feet) for each of the outfalls; and

(d) An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%).

(6) If a facility's permit coverage is effective less than one month from the end of a quarterly monitoring period, the first quarterly period starts with the next respective quarterly monitoring period (e.g., if permit coverage begins March 5, the permittee will not need to start quarterly visual monitoring until the April-June quarter).

b. Benchmark monitoring of discharges associated with specific industrial activities.

Table 70-1 identifies the specific industrial sectors subject to the benchmark monitoring requirements of this permit and the industry-specific pollutants of concern. The permittee ~~must~~ shall refer to the tables found in the individual sectors in Part IV (9VAC25-151-90 et seq.) for benchmark monitoring ~~cut-off concentrations~~ concentration values. Colocated industrial activities at the facility that are described in more than one sector in Part IV ~~must~~ shall comply with all applicable benchmark monitoring requirements from each sector.

The results of benchmark monitoring are primarily for the permittee to use to determine the overall effectiveness of the SWPPP in controlling the discharge of pollutants to receiving waters. Benchmark concentration values, included in Part IV of this permit, are not ~~viewed as~~

effluent limitations. ~~An exceedance~~ Exceedance of a benchmark ~~value~~ concentration does not~~, in and of itself,~~ constitute a violation of this permit~~. While exceedance of a benchmark value~~ and does not ~~automatically~~ indicate that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP ~~may be~~ are necessary, unless justification is provided in the comprehensive site compliance evaluation (Part III E). In addition, exceedance of benchmark ~~values~~ concentrations may identify facilities that would be more appropriately covered under an individual, or alternative general permit where more specific pollution prevention controls could be required.

TABLE 70-1.
INDUSTRIAL SECTORS SUBJECT TO BENCHMARK MONITORING.

Industry Sector[1]	Industry Sub-sector	Benchmark Monitoring Parameters
A	General Sawmills and Planing Mills	TSS, Zinc.
	Wood Preserving Facilities	Arsenic, Chromium, Copper, Phenols, TSS.
	Log Storage and Handling	TSS.
	Hardwood Dimension and Flooring Mills	TSS.
B	Paperboard Mills	BOD, TSS.
C	Industrial Inorganic Chemicals	Aluminum, Iron, Zinc, TSS, Total N.
	Plastics, Synthetic Resins, etc.	Zinc, TSS.
	Soaps, Detergents, Cosmetics, Perfumes	Total N, Zinc, TSS.
	Agricultural Chemicals	Total N, Iron, Zinc, Phosphorus, TSS.
D	Asphalt Paving and Roofing Materials	TSS.
E	Clay Products	Aluminum, TSS.
	~~Concrete~~ Lime and Gypsum Products	TSS, pH, Iron.
F	Steel Works, Blast Furnaces, and Rolling and Finishing Mills	Aluminum, Zinc, TSS.
	Iron and Steel Foundries	Aluminum, TSS, Copper, Iron, Zinc.
	Nonferrous Rolling and Drawing	Copper, Zinc, TSS.
	Nonferrous Foundries (Castings)	Copper, Zinc, TSS.
G[2]	Copper Ore Mining and Dressing	TSS
H	Coal Mines and Coal-Mining Related Facilities	TSS, Aluminum, Iron
I	Oil Refining	Lead, Nickel, Zinc, TKN, Total N, TSS
K	Hazardous Waste Treatment, Storage or Disposal	TKN, TSS, TOC, Arsenic, Cadmium, Cyanide, Lead, Mercury, Selenium, Silver.
L	Landfills, Land Application Sites, and Open Dumps	Iron, TSS.
M	Automobile Salvage Yards	TSS, Aluminum, Iron, Lead.
N	Scrap Recycling and Waste Recycling Facilities	Copper, Aluminum, Iron, Lead, Zinc, TSS, Cadmium, Chromium.
	Ship Dismantling, Marine Salvaging and Marine Wrecking	Aluminum, Cadmium, Chromium, Copper, Iron, Lead, Zinc, TSS.
O	Steam Electric Generating Facilities	Iron, TSS.
P	Land Transportation and Warehousing	TPH, TSS.
Q	Water Transportation Facilities	Aluminum, Iron, Zinc, TSS.

R	Ship and Boat Building or Repairing Yards	TSS.
S	Airports with deicing activities[3]	BOD, TKN, pH, COD, TSS.
U	Dairy Products.	BOD, TSS.
	Grain Mill Products	TSS, TKN.
	Fats and Oils	BOD, Total N, TSS.
Y	Rubber Products	Zinc, Lead, TSS.
Z	Leather Tanning and Finishing	TKN, TSS
AA	Fabricated Metal Products Except Coating	Iron, Aluminum, Zinc, TSS.
	Fabricated Metal Coating and Engraving	Zinc, TSS.
AC	Electronic and Electrical Equipment and Components, except Computers	Copper, Lead, TSS.
AD	Nonclassified Facilities/Storm Water Discharges Designated By the Board As Requiring Permits	TSS.

[1]Table does not include parameters for compliance monitoring under effluent limitations guidelines.

[2]See Sector G (Part IV G) for additional monitoring discharges from waste rock and overburden piles from active ore mining or dressing facilities, inactive ore mining or dressing facilities, and sites undergoing reclamation.

[3]Monitoring requirement is for airports with deicing activities that utilize more than 100 tons of urea or more than 100,000 gallons of glycol per year.

(1) (a) If a facility falls within a sector(s) required to conduct benchmark monitoring, monitoring shall be performed at least once during each of the first two, and potentially all, monitoring periods after the facility is granted coverage under the permit. Depending on the results of two consecutive monitoring periods, benchmark monitoring may not be required to be conducted in subsequent monitoring periods (see subsection (2) below).

(b) Monitoring periods for benchmark monitoring. ~~Unless otherwise specified in Part IV, the~~ The benchmark monitoring ~~period is July 1 to June 30 each year of the permit. If a facility falls within a sector(s) required to conduct benchmark monitoring, monitoring must be performed annually (once per year) during at least the first two, and potentially all, monitoring periods, unless otherwise specified in the sector specific requirements of Part IV. Depending on the results of two consecutive monitoring years, benchmark monitoring may not be required to be conducted in subsequent monitoring years (see subsection (2) below)~~ periods are as follows: (i) July 1, 2009, to December 31, 2009; (ii) January 1, 2010, to December 31, 2010; (iii) January 1, 2011, to December 31, 2011; (iv) January 1, 2012, to December 31, 2012; and, (v) January 1, 2013, to December 31, 2013.

(c) If a facility's permit coverage is effective less than one month from the end of a monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if permit coverage begins December 5, the permittee will not need to start sampling until the next January-December monitoring period).

(2) Benchmark monitoring waivers for facilities testing below benchmark concentration values. ~~All of the provisions of this subpart are available to permittees except as noted in Part IV.~~ Waivers from benchmark monitoring are available to facilities whose discharges are below benchmark concentration values~~, thus there is an incentive for facilities to improve the effectiveness of their SWPPPs in eliminating discharges of pollutants and avoid the cost of monitoring. On both a parameter by parameter and~~ on an outfall by outfall basis~~, sector-specific~~. Sector-specific benchmark monitoring is not required to be conducted in subsequent monitoring ~~years~~ periods during the term of this permit provided:

(a) Samples were collected in two consecutive monitoring ~~years~~ periods, and all the parameter concentrations were below the applicable benchmark ~~value~~ concentration values in Part IV; and

(b) The facility is not subject to a numeric limitation for that parameter established in Part I A 1 c ~~(Coal Pile Runoff)~~ (Storm Water Effluent Limitations, Coal Pile Runoff, and TMDL Wasteload Allocations) or Part IV (Sector Specific Permit Requirements); and

(c) A waiver request is submitted to and approved by the department. The waiver request ~~should~~ shall be sent to the appropriate regional office, along with the supporting monitoring data for two consecutive ~~years~~ monitoring periods, and a certification that, based on current potential pollutant sources and BMPs used, discharges from the facility are reasonably expected to be essentially the same (or cleaner) compared to when the benchmark monitoring for the two consecutive monitoring ~~years~~ periods was done.

Waiver requests will be evaluated by the department based upon: (i) benchmark monitoring results below the benchmark concentration values; (ii) a favorable compliance history (including inspection results); and (iii) no outstanding enforcement actions.

The monitoring waiver may be revoked by the department for just cause. The permittee will be notified in writing that the monitoring waiver is revoked, and that the benchmark monitoring requirements are again in force and will remain in effect until the permit's expiration date.

(3) Samples ~~must~~ shall be collected and analyzed in accordance with Part I A 2 ~~b~~. For each outfall, one signed Discharge Monitoring Report (DMR) form ~~must~~ shall be ~~maintained on site with the SWPPP~~ submitted to the department for each storm event sampled. Monitoring results ~~must~~ shall be retained in accordance with Part II B.

(4) Inactive and unstaffed sites. If the permittee is unable to conduct benchmark monitoring at an inactive and unstaffed site, a waiver of the monitoring requirement may be exercised as long as the facility remains inactive and unstaffed, and there are no industrial materials or activities exposed to storm water. If the permittee exercises this waiver, a certification ~~must~~ shall be submitted to the department and maintained with the SWPPP stating that the site is inactive and unstaffed, there are no industrial materials or activities exposed to storm water, and that performing benchmark monitoring during a qualifying storm event is not feasible. The waiver ~~must~~ shall be signed and certified in accordance with Part II K.

(5) Representative outfalls - essentially identical discharges. If the facility has two or more outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and storm water management practices occurring within the drainage areas of the outfalls, the permittee may perform benchmark monitoring on the effluent of just one of the outfalls and report that the quantitative data also applies to the substantially identical outfall(s). The permittee shall include the following information in the SWPPP, and in any DMRs that are required to be submitted to the department:

(a) The locations of the outfalls;

(b) Why the outfalls are expected to discharge substantially identical effluents, including evaluation of monitoring data, where available;

(c) Estimates of the size of the drainage area (in square feet) for each of the outfalls; and

(d) An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%).

~~c. Coal pile runoff.~~

~~(1) Facilities with discharges of storm water from coal storage piles must comply with the limitations and monitoring requirements of Table 70-2 for all discharges containing the coal pile runoff, regardless of the facility's sector of industrial activity. Permittees shall monitor such storm water discharges at least annually (once per year).~~

~~(2) The coal pile runoff must not be diluted with storm water or other flows in order to meet this limitation.~~

~~(3) If a facility is designed, constructed and operated to treat the volume of coal pile runoff that is associated with a 10-year, 24-hour rainfall event, any untreated overflow of coal pile runoff from the treatment unit is not subject to the 50 mg/L limitation for total suspended solids.~~

~~(4) Samples must be collected and analyzed in accordance with Part I A 2 b. Monitoring results must be reported in accordance with Part I A 4 and Part II C, and retained in accordance with Part II B.~~

~~TABLE 70-2.~~
~~NUMERIC LIMITATIONS FOR COAL PILE RUNOFF.~~

~~Parameter~~	~~Limit~~	~~Monitoring Frequency~~	~~Sample Type~~
~~Total Suspended Solids (TSS)~~	~~50 mg/l, max~~	~~1/year~~	~~Grab~~
~~pH~~	~~6.0 - 9.0 min. and max~~	~~1/year~~	~~Grab~~

~~d.~~ c. Compliance monitoring for discharges subject to numerical effluent ~~limitation guidelines~~ limitations.

(1) Facilities subject to storm water effluent limitation guidelines.

(a) Facilities subject to storm water effluent limitation guidelines (see Table 70-2) are required to monitor such discharges to evaluate compliance with numerical effluent limitations. Industry-specific numerical limitations and compliance monitoring requirements are described in Part IV of the permit (9VAC25-151-90 et seq.). Colocated industrial activities at the facility that are described in more than one sector in Part IV ~~must~~ shall comply on a discharge-by-discharge basis with all applicable effluent limitations from each sector.

(b) Permittees shall monitor the discharges for the presence of the pollutant subject to the effluent limitation at least ~~annually (once per year)~~ once during each of the

monitoring periods after the facility is granted coverage under the permit. If a facility's permit coverage is effective less than one month from the end of a monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if permit coverage begins December 5, the permittee will not need to start the effluent limitation monitoring until the next January-December monitoring period).

(c) The monitoring periods for effluent limitation monitoring are as follows: (i) July 1, 2009, to December 31, 2009; (ii) January 1, 2010, to December 31, 2010; (iii) January 1, 2011, to December 31, 2011; (iv) January 1, 2012, to December 31, 2012; and (v) January 1, 2013, to December 31, 2013.

~~(2)~~ (d) Samples ~~must~~ shall be collected and analyzed in accordance with Part I A 2 ~~b~~. ~~The representative outfalls provision of Part I A 2 d, the alternative certification provision of Part I A 3 b, and the low concentration waiver of Part I A 1 b(2) are not applicable to storm water discharge monitoring for compliance with effluent limitations. Results of all compliance monitoring must~~ Monitoring results shall be reported in accordance with Part I A 4 and Part II C, and retained in accordance with Part II B.

TABLE ~~70-3~~ 70-2.
STORM WATER-SPECIFIC EFFLUENT LIMITATION GUIDELINES ~~APPLICABLE TO DISCHARGES THAT MAY BE ELIGIBLE FOR PERMIT COVERAGE~~.

Effluent Limitation Guideline	Sectors with Affected Facilities
Runoff from material storage piles at cement manufacturing facilities (40 CFR Part 411 Subpart C ~~(2002)~~ (2006) (established February 23, 1977))	E
Contaminated runoff from phosphate fertilizer manufacturing facilities (40 CFR Part 418 Subpart A ~~(2002)~~ (2006) (established April 8, 1974))	C
Coal pile runoff at steam electric generating facilities (40 CFR Part 423 ~~(2002)~~ (2006) (established November 19, 1982))	O
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas (40 CFR Part 429, Subpart I ~~(2002)~~ (2007) (established January 26, 1981))	A
Runoff from asphalt emulsion facilities (40 CFR Part 443 Subpart A ~~(2002)~~ (2007) (established July 24, 1975))	D
Runoff from landfills, (40 CFR Part 445, Subpart A and B ~~(2002)~~ (2007) (established February 2, 2000))	K & L

(2) Facilities subject to coal pile runoff monitoring.

(a) Facilities with discharges of storm water from coal storage piles shall comply with the limitations and monitoring requirements of Table 70-3 for all discharges containing the coal pile runoff, regardless of the facility's sector of industrial activity.

(b) Permittees shall monitor such storm water discharges at least once during each of the monitoring periods after the facility is granted coverage under the permit. If a facility's permit coverage is effective less than one month from the end of a monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if permit coverage begins December 5, the permittee will not need to start the coal pile runoff monitoring until the next January-December monitoring period).

(c) Coal pile runoff monitoring periods are as follows: (i) July 1, 2009, to December 31, 2009; (ii) January 1, 2010, to December 31, 2010; (iii) January 1, 2011, to December 31, 2011; (iv) January 1, 2012, to December 31, 2012; and (v) January 1, 2013, to December 31, 2013.

(d) The coal pile runoff shall not be diluted with other storm water or other flows in order to meet this limitation.

(e) If a facility is designed, constructed and operated to treat the volume of coal pile runoff that is associated with a 10-year, 24-hour rainfall event, any untreated overflow of coal pile runoff from the treatment unit is not subject to the 50 mg/L limitation for total suspended solids.

(f) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 4 and Part II C, and retained in accordance with Part II B.

TABLE 70-3.
NUMERIC LIMITATIONS FOR COAL PILE RUNOFF.

Parameter	Limit	Monitoring Frequency	Sample Type
Total Suspended Solids (TSS)	50 mg/l, max.	1/year	Grab
pH	6.0 min. - 9.0 max.	1/year	Grab

(3) Facilities subject to Total Maximum Daily Load (TMDL) wasteload allocations.

(a) Upon written notification from the department, facilities subject to TMDL wasteload allocations will be required to monitor such discharges to evaluate compliance with the TMDL requirements.

(b) Permittees shall monitor the discharges for the pollutant subject to the TMDL wasteload allocation at least semiannually (twice per year). The TMDL semiannual monitoring periods are from July 1 to December 31, and January 1 to June 30. If a facility's notification that they are subject to the TMDL monitoring requirements is effective less than one month from the end of a semiannual monitoring period, the facility's first monitoring period starts with the next respective monitoring period (e.g., if notification is given on December 5, the permittee will not need to start semiannual monitoring until the next January 1 to June 30 monitoring period).

(c) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 4 and Part II C, and retained in accordance with Part II B.

2. Monitoring instructions.

~~a. Monitoring periods. Permittees that are required to conduct monitoring on an annual or quarterly basis must collect samples within the following time periods (unless otherwise specified in Part IV):~~

~~(1) The monitoring year is from July 1 to June 30.~~

~~(2) If a facility's permit coverage was effective less than one month from the end of a quarterly or yearly monitoring period, the first monitoring period starts with the next respective monitoring period (e.g., if permit coverage begins March 5, the permittee would not need to start quarterly sampling until the April June quarter, but the permittee would only have from March 5 to June 30 to complete that year's annual monitoring).~~

~~b.~~ a. Collection and analysis of samples. Sampling requirements ~~must~~ shall be assessed on an outfall by outfall basis. Samples ~~must~~ shall be collected and analyzed in accordance with the requirements of Part II A.

b. When and How to Sample. A minimum of one grab sample ~~must~~ shall be taken from the discharge associated with industrial activity resulting from a storm event ~~with at least~~ that is greater than 0.1 inch ~~of precipitation~~ in magnitude (defined as a "measurable" event), providing the interval from the preceding measurable storm is at least 72 hours. The 72-hour storm interval is waived when the preceding measurable storm did not yield a measurable discharge, or if the permittee is able to document that less than a 72-hour interval is representative for local storm events during the sampling period.

The grab sample ~~must~~ shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first hour of discharge provided that the permittee explains why a grab sample during the first 30 minutes was impracticable. This information ~~must~~ shall be submitted on or with the Discharge Monitoring Report (DMR), or maintained with the SWPPP if reports are not required to be submitted. If the sampled discharge commingles with process or nonprocess water, the permittee ~~must~~ shall attempt to sample the storm water discharge before it mixes with the nonstorm water.

c. Storm event data. Along with the monitoring results, the permittee ~~must~~ shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

~~d. Representative outfalls essentially identical discharges. If a facility has two or more outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials or storm water management practices occurring within the drainage areas of the outfalls, the permittee may test the effluent of just one of the outfalls and report that the quantitative data also applies to the substantially identical outfall(s). This outfall monitoring waiver for substantially identical discharges applies to quarterly visual monitoring as well, but does not apply to compliance monitoring for discharges subject to numerical effluent limitation guidelines (see Part I A 1 d (2)). The permittee must include the following information in the SWPPP, and in any DMRs that are required to be submitted to the department:~~

~~(1) The locations of the outfalls;~~

~~(2) Why the outfalls are expected to discharge substantially identical effluents;~~

~~(3) Estimates of the size of the drainage area (in square feet) for each of the outfalls; and~~

~~(4) An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%).~~

d. Documentation explaining a facility's inability to obtain a sample (including dates/times the outfalls were viewed and/or sampling was attempted), of no rain event,

or of no "measurable" storm event shall be maintained with the SWPPP. Acceptable documentation includes, but is not limited to, NCDC weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

~~3. Monitoring waivers. Unless specifically stated otherwise, the following waivers may be applied to any monitoring required under this permit.~~

~~a.~~ 3. Adverse climatic conditions waiver. When adverse weather conditions prevent the collection of samples, a substitute sample may be taken during a qualifying storm event in the next monitoring period. Adverse weather conditions are those that are dangerous or create inaccessibility for personnel, and may include such things as local flooding, high winds, electrical storms, or situations that otherwise make sampling impracticable, such as drought or extended frozen conditions. Unless specifically stated otherwise, this waiver may be applied to any monitoring required under this permit.

~~b. Alternative certification of "Not Present" or "No Exposure."~~

~~The permittee is not subject to the benchmark monitoring requirements of Part I A 1 b provided:~~

~~(1) A certification is made for a given outfall, or on a pollutant by pollutant basis in lieu of monitoring required under Part I A 1 b, that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period; and~~

~~(2) The certification is signed in accordance with Part II K, submitted to the department, and a copy retained with the SWPPP; and~~

~~(3) If certification cannot be made for an entire period, the permittee must document the date exposure was eliminated and must perform any monitoring required up until that date; and~~

~~(4) No numeric limitation for that parameter is established in Part IV.~~

4. Reporting monitoring results.

a. Reporting to the department. Depending on the types of monitoring required at a permitted facility, monitoring results may have to be submitted to the department, or they may only have to be kept with the SWPPP. The permittee ~~must~~ shall follow the reporting requirements and deadlines below for the types of monitoring that apply to the facility:

TABLE 70-4.
MONITORING REPORTING REQUIREMENTS.

Monitoring for Numeric ~~Limitation~~ Effluent Limitations (other than TMDL Wasteload Allocations)	Submit results on a DMR by ~~the 10th day of the month after monitoring takes place~~ January 30.
Semiannual Monitoring for TMDL Wasteload Allocations	Submit results on a DMR by January 30 and by July 30.
Benchmark Monitoring	~~Retain results with SWPPP - do not submit unless requested to do so by the department.~~ Submit results on a DMR by January 30.
~~Biannual~~ Annual Monitoring for Metal Mining Facilities (see Part IV, Sector G)	Retain results with SWPPP - do not submit unless requested to do so by the department.
Quarterly Visual Monitoring	Retain results with SWPPP - do not submit unless requested to do so by the department.
Follow-up Monitoring (see subsection A 5 c below).	Submit results on a DMR no later than 30 days after the results are received.

Permittees that are required to submit monitoring shall submit results for each outfall associated with industrial activity according to the requirements of Part II C. For each outfall, one signed discharge monitoring report (DMR) form ~~must~~ shall be submitted to the department per storm event sampled.

b. ~~Additional reporting. In addition to filing copies of discharge monitoring reports in accordance with Part II C, permittees with at least one storm water discharge associated with industrial activity through a municipal separate storm sewer system (MS4), or a municipal system designated by the director, must submit signed copies of DMRs to the MS4 operator at the same time. Permittees not required to report monitoring data and permittees that are not otherwise required to monitor their discharges need not comply with this provision.~~ Significant digits. The permittee shall report at least the same number of significant digits as a numeric effluent limitation or TMDL wasteload allocation for a given parameter; otherwise, at least two significant digits shall be reported for a given parameter. Regardless of the rounding convention used by the permittee (i.e., five always rounding up or to the nearest even number), the

permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

5. Corrective actions.

a. Data exceeding benchmarks concentration values. If the benchmark monitoring result exceeds the benchmark concentration value for that parameter, the permittee must review the SWPPP and modify it as necessary to address any deficiencies that caused the exceedance. Revisions to the SWPPP must be completed within 30 days after an exceedance is discovered. When BMPs need to be modified or added (distinct from regular preventive maintenance of existing BMPs described in Part III C), implementation must be completed before the next anticipated storm event if possible, but no later than 60 days after the exceedance is discovered, or as otherwise provided or approved by the department. Any BMP modifications must be documented and dated, and retained with the SWPPP, along with the amount of time taken to modify the applicable BMPs or implement additional BMPs.

b. Corrective actions. The permittee must take corrective action whenever:

(1) Routine facility inspections, comprehensive site compliance evaluations, inspections by local, state or federal officials, or any other process, observation or event result in discovery of any deficiency; or

(2) There is any exceedance of an effluent limitation (including coal pile runoff), TMDL wasteload allocation, or water quality standard.

The permittee must review the SWPPP and modify it as necessary to address any deficiencies. Revisions to the SWPPP must be completed within 30 days following the discovery of the deficiency. When BMPs need to be modified or added (distinct from regular preventive maintenance of existing BMPs described in Part III C), implementation must be completed before the next anticipated storm event if possible, but no later than 60 days after the deficiency is discovered, or as otherwise provided or approved by the department. The amount of time taken to modify a BMP or implement additional BMPs must be documented in the SWPPP.

Any corrective actions taken must be documented and retained with the SWPPP. Reports of corrective actions must be signed in accordance with Part II K.

c. Follow-up monitoring and reporting. If at any time monitoring results indicate that discharges from the facility exceed an effluent limitation or a TMDL wasteload allocation, or that discharges from the facility are causing or contributing to an exceedance of a water quality standard, immediate steps must be taken to eliminate the exceedances in accordance with the above Part I A 5 b (Corrective actions). Within 30 calendar days of implementing the relevant corrective action(s) (or during the next qualifying runoff event, should none occur within 30 calendar days) follow-up monitoring must be undertaken to verify that the BMPs that were modified are effectively protecting water quality. Follow-up monitoring need only be conducted for pollutant(s) with prior exceedances unless there are reasons to believe that facility modifications may have reduced pollutant prevention or removal capacity for other pollutants of concern.

The follow-up monitoring data must be submitted to the department no later than 30 days after the results are received. If the follow-up monitoring value does not exceed the effluent limitation or other relevant standard, no additional follow-up monitoring is required for this monitoring event.

Should the follow-up monitoring indicate that the effluent limitation, TMDL wasteload allocation, water quality standard or other relevant standard is still being exceeded, an exceedance report must be submitted to the department no later than 30 days after the follow-up monitoring results are received. The following information must be included in the report: permit number; facility name, address and location; receiving water; monitoring data from this and the preceding monitoring event(s); an explanation of the situation; description of what has been done and the intended actions (should the corrective actions not yet be complete) to further reduce pollutants in the discharge; and an appropriate contact name and phone number. Additional follow-up monitoring must be continued at an appropriate frequency, but no less often than quarterly, until the discharge no longer exceeds the standard.

B. Special conditions.

1. Allowable nonstorm water discharges. Except as provided in this section or in Part IV (9VAC25-151-90 et seq.), all discharges covered by this permit shall be composed entirely of storm water. The following nonstorm water discharges are authorized by this permit ~~provided the nonstorm water component of the discharge is in compliance with Part III D 2 (Nonstorm water discharges) of this general permit~~:

a. Discharges from fire fighting activities;

b. Fire hydrant flushings;

c. Potable water including water line flushings;

d. Uncontaminated air conditioning or compressor condensate (excluding air compressors);

e. Irrigation drainage;

f. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with manufacturer's instructions;

g. Routine external building wash down that does not use detergents;

h. Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);

i. Uncontaminated ground water or spring water;

j. Foundation or footing drains where flows are not contaminated with process materials ~~such as solvents~~; and

k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

All other nonstorm water discharges ~~must~~ shall be in compliance with a VPDES permit (other than this permit) issued for the discharge.

The following nonstorm water discharges are specifically not authorized by this permit:

Sector A - Timber products. Discharges of storm water from areas where there may be contact with chemical formulations sprayed to provide surface protection.

Sector C - Chemical and allied products manufacturing. Inks, paints, or substances (hazardous, nonhazardous, etc.) resulting from an on-site spill, including materials collected in drip pans; washwaters from material handling and processing areas; or washwaters from drum, tank, or container rinsing and cleaning.

Sector G - Metal mining (ore mining and dressing). Adit drainage or contaminated springs or seeps; and contaminated seeps and springs discharging from waste rock dumps that do not directly result from precipitation events.

Sector H - Coal mines and coal mining-related facilities. Discharges from pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not result from precipitation events; and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas.

Sector I - Oil and gas extraction and refining. Discharges of vehicle and equipment washwater, including tank cleaning operations.

Sector K - Hazardous waste treatment, storage, or disposal facilities. Leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory-derived wastewater and contact washwater from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

Sector L - Landfills, land application sites and open dumps. Leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact washwater from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

Sector N - Scrap recycling and waste recycling facilities. Discharges from turnings containment areas in the absence of a storm event.

Sector O - Steam electric generating facilities. Nonstorm water discharges subject to effluent limitation guidelines.

Sector P - Land transportation and warehousing. Vehicle/equipment/surface washwater, including tank cleaning operations.

Sector Q - Water transportation. Bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels.

Sector R - Ship and boat building or repair yards. Bilge and ballast water, pressure wash water, sanitary wastes, and cooling water originating from vessels.

Sector S - Air transportation. Aircraft, ground vehicle, runway and equipment washwaters; and dry weather discharges of deicing/anti-icing chemicals.

Sector T - Treatment works. Sanitary and industrial wastewater; and equipment/vehicle washwaters.

Sector U - Food and kindred products. Boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging, and vehicle washing/clean-out operations.

Sector V - Textile mills, apparel, and other fabric products. Discharges of wastewater (e.g., wastewater as a result of wet processing or from any processes relating to the production process); reused/recycled water; and waters used in cooling towers.

2. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the storm water discharge(s) from the facility shall be prevented or minimized in accordance with the storm water pollution prevention plan for the facility. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 ~~(2002)~~ (2007), 40 CFR Part 117 ~~(2002)~~ (2007) and 40 CFR Part 302 ~~(2002)~~ (2007) or § 62.1-44.34:19 of the Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity

established under either 40 CFR Part 110 ~~(2002)~~ (2007), 40 CFR Part 117 ~~(2002)~~ (2007) or 40 CFR Part 302 ~~(2002)~~ (2007) occurs during a 24-hour period:

a. The permittee is required to notify the department in accordance with the requirements of Part II G as soon as he has knowledge of the discharge;

b. Where a release enters a municipal separate storm sewer system (MS4), the permittee shall also notify the owner of the MS4; and

c. The storm water pollution prevention plan required under Part III ~~must~~ shall be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan ~~must~~ shall be modified where appropriate.

3. Colocated industrial activity. If the facility has industrial activities occurring on-site which are described by any of the activities in Part IV of the permit (9VAC25-151-90 et seq.), those industrial activities are considered to be colocated industrial activities. Storm water discharges from colocated industrial activities are authorized by this permit, provided that the permittee complies with any and all additional pollution prevention plan and monitoring requirements from Part IV applicable to that particular colocated industrial activity. The permittee shall determine which additional pollution prevention plan and monitoring requirements are applicable to the colocated industrial activity by examining the narrative descriptions of each coverage section (Discharges covered under this section).

4. The storm water discharges authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the combined discharge is in compliance with this permit.

5. There shall be no discharge of floating solids or visible foam in other than trace amounts.

6. ~~Additional requirements for salt~~ Salt storage piles or piles containing salt. Storage piles of salt or piles containing salt used for deicing or other commercial or industrial purposes ~~must~~ shall be enclosed or covered to prevent exposure to precipitation ~~(except for exposure resulting from adding or removing materials from the pile). Piles do not need to be enclosed or covered where storm water from the pile is not discharged to state waters or the discharges from the piles are authorized under another permit~~. The permittee shall implement appropriate measures (e.g., good housekeeping, diversions, containment) to minimize exposure resulting from adding to or removing materials from the pile. All salt storage piles shall be located on an impervious surface. All runoff from the pile, and/or runoff that comes in contact with salt, including under drain systems, shall be collected and contained within a basin lined with concrete or other impermeable materials. This lined basin shall be bermed and shall be sized to contain runoff resulting from a 24-hour 25-year storm event. In no case shall salt contaminated stormwater be allowed to discharge directly to the ground or to state waters.

7. Discharges to waters subject to TMDL wasteload allocations. Facilities that are an identified source of the specified pollutant of concern to waters for which a "total maximum daily load" (TMDL) wasteload allocation has been established by the board and approved by EPA prior to the term of this permit shall incorporate measures and controls into the SWPPP required by Part III that are consistent with the assumptions and requirements of the TMDL. The department will provide written notification to the owner that a facility is subject to the TMDL requirements. The facility's SWPPP shall specifically address any conditions or requirements included in the TMDL that are applicable to discharges from the facility. If the TMDL establishes a specific numeric wasteload allocation that applies to discharges from the facility, the owner shall incorporate that allocation into the facility's SWPPP, perform any required monitoring in accordance with Part I A 1 c (3), and implement measures necessary to meet that allocation.

~~7.~~ 8. Water quality protection. The permittee ~~must~~ shall select, install, implement and maintain best management practices (BMPs) at the facility that minimize pollutants in the storm water discharges as necessary to meet applicable water quality standards. If there is evidence indicating that the storm water discharges authorized by this permit are causing, have the reasonable potential to cause, or are contributing to an excursion above an applicable water quality standard, an excursion above a TMDL wasteload allocation, or are causing downstream pollution (as defined in § 62.1-44.3 of the Code of Virginia), the board may take appropriate enforcement action, may require the permittee to include and implement appropriate controls in the SWPPP to correct the problem, and/or may require the permittee to obtain an individual permit in accordance with 9VAC25-31-170 B 3.

9. Adding/deleting storm water outfalls. The permittee may add new and/or delete existing storm water outfalls at the facility as necessary/appropriate. The permittee shall update the SWPPP and notify the department of all outfall changes within 30 days of the change. The permittee shall submit a copy of the updated SWPPP site map with their notification.

Part II
Conditions Applicable to All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 ~~(2002)~~ (2007) or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:

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

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

c. The date(s) and time(s) analyses were performed;

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

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 ~~(2002)~~ (2007) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

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

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

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

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

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:

a. Any unanticipated bypass; and

b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Part II G, H and I may be made to the department's regional office. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

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

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of Clean Water Act which are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or

absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

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

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least ~~180~~ 90 days before the expiration date of the existing permit, unless permission for a later date has been

granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part II U), and "upset" (Part II V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

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

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

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

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2. Notice.

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

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

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

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

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

(3) The permittee submitted notices as required under Part II U 2.

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

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

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

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

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

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

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

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

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

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

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

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

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

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

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Part III
Storm Water Pollution Prevention Plan

9VAC25-151-80. Storm Water Pollution Prevention Plans.

A Storm Water Pollution Prevention Plan (SWPPP) ~~must~~ shall be developed and implemented for the facility covered by this permit. The SWPPP shall ~~be prepared in accordance~~ include Best Management Practices (BMPs) that are reasonable and appropriate in light of current industry practices. The BMPs shall be selected, designed, installed, implemented and maintained in accordance with good engineering practices ~~and shall identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the facility. In addition, the plan shall describe and ensure the implementation of practices that will be used~~ to eliminate or reduce the pollutants in all storm water discharges from the facility~~, and shall assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the SWPPP as a condition of this permit~~. The SWPPP shall also include any more stringent measures necessary for the storm water discharges to meet applicable water quality standards.

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as ~~an erosion and sediment control (ESC) plan,~~ a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act, or best management practices (BMP) programs otherwise required for the facility, provided that the incorporated plan meets or exceeds the plan requirements of Part III B (Contents of the Plan). ~~If an ESC plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Erosion and Sediment Control Regulations, 4VAC50-30-10~~

~~et seq.~~ All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Part III B, the permittee shall develop the missing SWPPP elements and include them in the required plan.

A. Deadlines for plan preparation and compliance.

1. Facilities that were covered under the ~~1999~~ 2004 Industrial Storm Water General Permit. Owners of facilities that were covered under the ~~1999~~ 2004 Industrial Storm Water General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP ~~not later than August 30, 2004~~ prior to submitting the registration statement.

2. New facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who elect to be covered under this general permit ~~must~~ shall prepare and implement the SWPPP prior to submitting the registration statement.

3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility ~~must~~ shall update and implement any revisions to the SWPPP within 60 days of the ownership change.

4. Extensions. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

B. Contents of the plan. The contents of the SWPPP shall comply with the requirements listed below and those in the appropriate sectors of Part IV (9VAC25-151-90 et seq.) These requirements are cumulative. If a facility has colocated activities that are covered in more than one sector of Part IV, that facility's pollution prevention plan ~~must~~ shall comply with the requirements listed in all applicable sectors. The following requirements are applicable to all SWPPPs developed under this general permit. The plan shall include, at a minimum, the following items:

1. Pollution prevention team. The plan shall identify the staff individuals by name or title that comprise the facility's storm water pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, ~~and~~ revising and ensuring compliance with the facility's SWPPP. ~~Responsibilities~~ Specific responsibilities of each staff individual on the team ~~must~~ shall be identified and listed.

2. Site description. The SWPPP shall include the following:

a. Activities at the facility. A description of the nature of the industrial ~~activity(ies)~~ activities at the facility.

b. General location map. A general location map (e.g., USGS quadrangle or other map) with enough detail to identify the location of the facility and the receiving waters within one mile of the facility.

c. Site map. A site Map identifying the following:

(1) ~~Directions~~ The size of the property (in acres);

(2) The location and extent of significant structures and impervious surfaces (roofs, paved areas and other impervious areas);

(3) Locations of all storm water conveyances including ditches, pipes, swales, and inlets, and the directions of storm water flow ~~(e.g., use arrows to show which ways storm water will flow)~~ (use arrows to show which ways storm water will flow);

~~(2)~~ (4) Locations of all existing structural and source control BMPs;

~~(3)~~ (5) Locations of all surface water bodies, including wetlands;

~~(4)~~ (6) Locations of potential pollutant sources identified under Part III B 3 ~~and where significant materials are exposed to precipitation~~;

~~(5)~~ (7) Locations where ~~major~~ significant spills or leaks identified under Part III B 4 have occurred;

~~(6)~~ (8) Locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance and/or cleaning areas; loading/unloading areas; locations used for the treatment, storage or disposal of wastes; ~~and~~ liquid storage tanks; processing and storage areas; access roads, rail cars and tracks; transfer areas for substances in bulk; and machinery;

~~(7)~~ (9) Locations of storm water outfalls and an approximate outline of the area draining to each outfall, and location of municipal storm sewer systems, if the storm water from the facility discharges to them;

~~(8)~~ (10) Location and description of all nonstorm water discharges;

~~(9)~~ (11) ~~Locations of the following activities where such activities are exposed to precipitation: processing and storage areas; access roads, rail cars and tracks; the location of transfer of substance in bulk; and machinery~~ Location of any storage piles containing salt used for deicing or other commercial or industrial purposes; and

~~(10)~~ (12) ~~Location and source of runoff~~ Locations and sources of runon to the site from adjacent property ~~containing~~, where the runon contains significant

quantities of pollutants ~~of concern to the facility (the permittee may include an evaluation of how the quality of the storm water running onto the facility impacts the facility's storm water discharges)~~. The permittee shall include an evaluation with the SWPPP of how the quality of the storm water running onto the facility impacts the facility's storm water discharges.

d. Receiving waters and wetlands. The name of ~~the nearest~~ all surface waters receiving ~~water(s)~~ discharges from the site, including intermittent streams, dry sloughs, and arroyos ~~and the areal extent~~. Provide the size and description of wetland sites that may receive discharges from the facility. If the facility discharges through a municipal separate storm sewer system (MS4), identify the MS4 operator, and the receiving water to which the MS4 discharges.

3. Summary of potential pollutant sources. The plan shall identify each separate area at the facility where industrial materials or activities are exposed to storm water. Industrial materials or activities include, but are not limited to: material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, ~~or~~ and waste products. Material handling activities include, but are not limited to: the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product or waste product. For each separate area identified, the description ~~must~~ shall include:

a. Activities in area. A list of the activities (e.g., material storage, equipment fueling and cleaning, cutting steel beams); and

b. Pollutants. A list of the associated pollutant(s) or pollutant ~~parameter(s)~~ constituents ~~(e.g., crankcase oil, iron, biochemical oxygen demand, pH, etc.)~~ (e.g., crankcase oil, zinc, sulfuric acid, cleaning solvents, etc.) for each activity. The pollutant list ~~must~~ shall include all significant materials ~~that have been~~ handled, treated, stored or disposed ~~in a manner to allow exposure~~ that have been exposed to storm water ~~between the time of~~ in the three years ~~before being covered under this permit and the present~~ prior to the date this SWPPP was prepared or amended. The list shall include any hazardous substances or oil at the facility.

4. Spills and leaks. The SWPPP ~~must~~ shall clearly identify areas where potential spills and leaks that can contribute pollutants to storm water discharges can occur and their ~~accompanying drainage points~~ corresponding outfalls. ~~For areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility to be covered under this permit, the~~ The plan ~~must~~ shall include a list of significant spills and leaks of toxic or hazardous pollutants that actually occurred at exposed areas, or that drained to a storm water conveyance during the three-year period prior to the date ~~of the submission of a registration statement~~ this SWPPP was prepared or amended. The list ~~must~~ shall be updated if significant spills or leaks occur in exposed areas of the facility during the term of the permit. Significant spills and leaks include releases of oil or hazardous substances in excess of reportable quantities, and may also include releases of oil or hazardous substances that are not in excess of reporting requirements.

5. Sampling data. The plan ~~must~~ shall include a summary of existing storm water discharge sampling data taken at the facility~~, and must also include a~~. The summary ~~of sampling~~ shall include, at a minimum, any data collected during the ~~term of this~~ previous permit term.

6. Storm water controls. ~~The SWPPP shall include a description of storm water management controls appropriate for the facility. The description of controls shall address the following minimum components:~~

a. ~~Description of existing and planned~~ BMPs~~. The plan shall describe the type and location of existing nonstructural and structural best management practices (BMPs) selected for each of the areas where industrial materials or activities are exposed to storm water. All~~ shall be implemented for all the areas identified in Part III B 3 (summary of potential pollutant sources) ~~should have a BMP(s) identified for the area's discharges. For areas where BMPs are not currently in place, include a description of appropriate BMPs that will be used to control pollutants in storm water discharges.~~ to prevent or control pollutants in storm water discharges from the facility. All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility. The SWPPP shall describe the type, location and implementation of all BMPs for each area where industrial materials or activities are exposed to storm water.

Selection of BMPs ~~should~~ shall take into consideration:

~~(1) The quantity and nature of the pollutants, and their potential to impact the water quality of receiving waters;~~

~~(2) Opportunities to combine the dual purposes of water quality protection and local flood control benefits, including physical impacts of high flows on streams (e.g., bank erosion, impairment of aquatic habitat, etc.);~~

~~(3) Opportunities to offset the impact of impervious areas of the facility on ground water recharge and base flows in local streams, taking into account the potential for ground water contamination.~~

(1) That preventing storm water from coming into contact with polluting materials is much more effective than trying to remove pollutants from storm water;

(2) BMPs generally shall be used in combination with each other for most effective water quality protection;

(3) The type and quantity of pollutants, including their potential to impact receiving water quality;

(4) That minimizing impervious areas at the facility will reduce runoff and improve groundwater recharge and stream base flows in local streams (taking into account the potential for ground water contamination);

(5) Flow attenuation by use of open vegetated swales and natural depressions;

(6) Diverting flow from areas of materials handling, storage or use;

(7) Conservation or restoration of riparian buffers;

(8) Infiltration of runoff onsite, (including bioretention cells, green roofs, and pervious pavement);

(9) Treatment interceptors (e.g., swirl separators and sand filters); and

(10) The selection of BMPs shall optimize the quantity and quality of storm water discharges from the site.

b. ~~BMP types to be considered.~~ The permittee ~~must consider~~ shall implement the following types of ~~structural, nonstructural and other~~ BMPs ~~for implementation at~~ to prevent and control pollutants in the storm water discharges from the facility, unless it can be demonstrated and documented that such controls are not relevant to the discharges (e.g., there are no storage piles containing salt). ~~The SWPPP shall describe how each BMP is, or will be, implemented. If this requirement was fulfilled with the area-specific BMPs identified under Part III B 6 a, then the previous description is sufficient. However, many of the following BMPs may be more generalized or non-site-specific and therefore not previously considered. If the permittee determines that any of these BMPs are not appropriate for the facility, an explanation of why they are not appropriate shall be included in the plan. The BMP examples listed below are not intended to be an exclusive list of BMPs that may be used.~~ The ~~permittee is encouraged to keep abreast of~~ SWPPP shall incorporate, as appropriate, new BMPs or new applications of existing BMPs ~~to find~~ for the most ~~cost-~~effective means of ~~permit compliance for the facility~~ achieving water quality protection. ~~If BMPs are being used or planned at the facility that are not listed here (e.g., replacing a chemical with a less toxic alternative, adopting a new or innovative BMP, etc.), descriptions of them shall be included in this section of the SWPPP.~~

~~(1) Nonstructural BMPs.~~

~~(a)~~ (1) Good housekeeping. The permittee ~~must~~ shall keep clean all exposed areas of the facility ~~in a clean, orderly manner where such exposed areas could contribute~~ that are potential sources of pollutants to storm water discharges. ~~Common~~ Typical problem areas include areas around trash containers, storage areas ~~and~~, loading docks, and vehicle fueling and maintenance areas. ~~Measures must also~~ The plan shall include a schedule for regular pickup and disposal of ~~garbage and~~ waste materials~~;~~, along with routine inspections for leaks and conditions of drums, tanks and containers. The introduction of raw, final or waste materials to exposed areas of the facility shall be minimized to the maximum extent practicable. The generation of dust, along with off-site vehicle tracking of raw, final or waste materials, or sediments, shall be minimized to the maximum extent practicable.

~~(b) Minimizing~~ (2) Eliminating and minimizing exposure. ~~Where~~ To the extent practicable, industrial materials and activities ~~should~~ shall be located inside, or protected by a storm-resistant ~~shelter~~ covering to prevent exposure to rain, snow, snowmelt, ~~or~~ and runoff. Note: Eliminating exposure at all industrial areas may make the facility eligible for the "Conditional Exclusion for No Exposure" provision of 9VAC25-31-120 F, thereby eliminating the need to have a permit.

~~(c)~~ (3) Preventive maintenance. The permittee ~~must~~ shall have a preventive maintenance program that includes ~~timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins), as well as~~ regular inspection, testing, maintenance and repairing of ~~facility~~ all industrial equipment and systems to avoid breakdowns or failures that could result in ~~discharges of pollutants to surface waters~~ leaks, spill and other releases. This program is in addition to the specific BMP maintenance required under Part III C (Maintenance of BMPs).

~~(d)~~ (4) Spill prevention and response procedures. The plan ~~must~~ shall describe the procedures that will be followed for ~~cleaning up~~ preventing and responding to spills ~~or~~ and leaks. ~~The procedures and necessary spill response equipment must be made available to those employees who may cause or detect a spill or leak. Where appropriate, the plan must include an explanation of existing or planned material handling procedures, storage requirements, secondary containment, and equipment (e.g., diversion valves), that are intended to minimize spills or leaks at the facility.~~

(a) Preventive measures include barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling.

(b) Response procedures shall include notification of appropriate facility personnel, emergency agencies, and regulatory agencies, and procedures for stopping, containing and cleaning up spills. Measures for cleaning

up hazardous material spills or leaks ~~must~~ shall be consistent with applicable RCRA regulations at 40 CFR Part 264 ~~(2002)~~ (2007) and 40 CFR Part 265 ~~(2002)~~ (2007). Employees who may cause, detect or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of the Pollution Prevention Team.

(c) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP, and in other locations where it will be readily available.

~~(c)~~ (5) Routine facility inspections. Facility personnel who ~~are familiar with the industrial activity, the BMPs and the storm water pollution prevention plan~~ possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility, and who can also evaluate the effectiveness of BMPs shall ~~be identified to~~ regularly inspect all areas of the facility where industrial materials or activities are exposed to storm water. These inspections are in addition to, or as part of, the comprehensive site evaluation required under Part III E, and ~~must~~ shall include an ~~evaluation~~ assessment of how well the ~~existing~~ storm water BMPs are operating. At least one member of the Pollution Prevention Team shall participate in the routine facility inspections.

The inspection frequency shall be specified in the plan based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit or written approval is received from the department for less frequent intervals. The requirement for routine facility inspections is waived for facilities that have maintained an active E3/E4 status.

Any deficiencies in the implementation of the SWPPP that are found ~~must~~ shall be corrected as soon as practicable, but not later than within ~~14~~ 30 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections ~~must~~ shall be documented in the SWPPP, along with the date(s) and description(s) of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.

~~(f)~~ (6) Employee training. The ~~SWPPP must describe the~~ permittee shall implement a storm water employee training program for the facility. ~~The description should include the topics to be covered, such as spill response, good housekeeping, and material management practices, and must identify periodic dates for such training (e.g., every six months during the months of July and January).~~ The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training. ~~Employee training must~~ Training shall be provided for all employees who work in areas where industrial materials or activities are exposed to storm water, ~~and~~ for employees who are responsible for implementing activities identified in the SWPPP ~~(e.g., inspectors, maintenance people)~~ (e.g., inspectors, maintenance personnel, etc.), and for all members of the Pollution Prevention Team. ~~The training should inform employees of~~ The training shall cover the components and goals of the SWPPP, and include such topics as spill response, good housekeeping, material management practices, BMP operation and maintenance, etc. The SWPPP shall include a summary of any training performed.

~~(2) Structural BMPs.~~

~~(a)~~ (7) Sediment and erosion control. The plan shall identify areas at the facility that, due to topography, land disturbance ~~(e.g., construction)~~ (e.g., construction, landscaping, site grading), or other factors, have a potential for ~~significant~~ soil erosion. The ~~plan must~~ permittee shall identify and implement structural, vegetative, and/or stabilization BMPs ~~that will be implemented~~ to ~~limit~~ prevent or control on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if the flows would otherwise create erosive conditions.

~~(b)~~ (8) Management of runoff. The plan shall describe the ~~traditional~~ storm water runoff management practices ~~(permanent structural BMPs other than those that control the generation or source(s) of pollutants) that currently exist or that are planned~~ (i.e., permanent structural BMPs) for the facility. These types of BMPs are typically used to divert, infiltrate, reuse, or otherwise reduce pollutants in storm water discharges from the site. ~~The plan shall provide that all measures that the permittee determines to be reasonable and appropriate, or are required by a state or local authority shall be implemented and maintained. Factors for the permittee to consider when selecting appropriate BMPs should include:~~

~~(i) The industrial materials and activities that are exposed to storm water, and the associated pollutant potential of those materials and activities; and~~

~~(ii) The beneficial and potential detrimental effects on surface water quality, ground water quality, receiving water base flow (dry weather stream flow), and physical integrity of receiving waters.~~

~~Structural measures should be placed on upland soils, avoiding wetlands and floodplains, if possible.~~ Structural BMPs may require a separate permit under § 404 of the

CWA and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

~~(c) Example BMPs. BMPs that could be used include but are not limited to: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff on site; and sequential systems (which combine several practices).~~

~~(d) Other Controls. Off site vehicle tracking of raw, final, or waste materials or sediments, and the generation of dust must be minimized. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas must be minimized. Velocity dissipation devices (or equivalent measures) must be placed at discharge locations and along the length of any outfall channel if they are necessary to provide a nonerosive flow velocity from the structure to a water course.~~

C. Maintenance. All BMPs identified in the SWPPP ~~must~~ shall be maintained in effective operating condition. Storm water BMPs identified in the SWPPP shall be observed during active operation (i.e., during a storm water runoff event) to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP.

The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all BMPs, and shall include the amount of time for maintenance and repair, and a description of the back-up practices that are in place should a runoff event occur while a BMP is off-line. The effectiveness of nonstructural BMPs shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.).

If site inspections required by Part III B 6 b (5) (Routine facility inspections) or Part III E (Comprehensive site compliance evaluation) identify BMPs that are not operating effectively, repairs or maintenance ~~must~~ shall be performed before the next anticipated storm event~~, or as necessary to maintain the continued effectiveness of storm water controls~~. If maintenance prior to the next anticipated storm event is ~~impracticable~~ not possible, maintenance ~~must~~ shall be scheduled and accomplished as soon as practicable, and documentation included in the SWPPP to justify the extended repair schedule. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. ~~In the case of nonstructural BMPs, the effectiveness of the BMP must be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.).~~ All maintenance and repair activities and dates shall be documented in the SWPPP. For repairs, the date of deficiency discovery and the date on which the BMP was restored to full-function shall also be documented in the SWPPP.

~~D. Nonstorm water discharges.~~

~~1. Certification of nonstorm water discharges.~~

~~a. The SWPPP must include a certification that all discharges (i.e., outfalls) have been tested or evaluated for the presence of nonstorm water. The certification must be signed in accordance with Part II K of this permit, and include:~~

~~(1) The date of any testing and/or evaluation;~~

~~(2) Identification of potential significant sources of nonstorm water at the site;~~

~~(3) A description of the results of any test and/or evaluation for the presence of nonstorm water discharges;~~

~~(4) A description of the evaluation criteria or testing method used; and~~

~~(5) A list of the outfalls or on site drainage points that were directly observed during the test.~~

~~b. A new certification does not need to be signed if one was completed for the 1999 Industrial Storm Water General Permit and the permittee has no reason to believe conditions at the facility have changed.~~

~~c. If the permittee is unable to provide the certification required (testing for nonstorm water discharges), the director must be notified 180 days after submitting a registration statement to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification must describe:~~

~~(1) The reason(s) why certification was not possible;~~

~~(2) The procedure of any test attempted;~~

~~(3) The results of such test or other relevant observations; and~~

~~(4) Potential sources of nonstorm water discharges to the storm sewer.~~

~~d. A copy of the notification must be included in the SWPPP at the facility. Nonstorm water discharges to state waters that are not authorized by a VPDES permit are unlawful, and must be terminated.~~

~~2.~~ D. Allowable nonstorm water discharges.

~~a. The~~ 1. Discharges of certain sources of nonstorm water ~~listed in Part I B 1 (allowable nonstorm water discharges)~~ are allowable discharges under this permit (see Part I B 1 - Allowable nonstorm water discharges) provided the permittee includes the following information in the SWPPP:

~~(1)~~ a. Identification of each allowable nonstorm water source, except for flows from fire fighting activities;

~~(2)~~ b. The location where the nonstorm water is likely to be discharged; and

~~(3)~~ c. Descriptions of ~~any~~ appropriate BMPs ~~that are being used~~ for each source.

~~b.~~ 2. If mist blown from cooling towers is included as one of the allowable nonstorm water discharges from the facility, the permittee ~~must~~ shall specifically evaluate the ~~potential for the discharges to be contaminated by~~ discharge for the presence of chemicals used in the cooling tower ~~and must select and implement BMPs to control such discharges so that the levels of cooling tower chemicals in the discharges would not cause or contribute to a violation of an applicable water quality standard~~. The evaluation shall be included in the SWPPP.

3. Allowable nonstorm water discharges are subject to all of the provisions of this permit, including numeric effluent limitations, benchmarks and monitoring requirements.

E. Comprehensive site compliance evaluation. The permittee shall conduct ~~facility inspections (site compliance evaluations)~~ comprehensive site compliance evaluations at least once a year. The ~~inspections must~~ evaluations shall be done by qualified personnel who ~~may be either facility employees or outside constituents hired by the facility. The inspectors must be familiar with the industrial activity, the BMPs and the SWPPP, and must possess the skills to assess conditions at the facility that could impact storm water quality, and to assess the effectiveness of the BMPs that have been chosen to control the quality of the storm water discharges. If more frequent inspections are conducted, the SWPPP must specify the frequency of inspections~~ possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility, and who can also evaluate the effectiveness of BMPs. At least one member of the Pollution Prevention Team shall participate in the comprehensive site compliance evaluations.

1. Scope of the compliance evaluation. ~~Inspections must~~ Evaluations shall include all areas where industrial materials or activities are exposed to storm water, as identified in Part III B 3~~, and areas where spills and leaks have occurred within the past three years. Inspectors should look for~~. The personnel shall evaluate:

a. Industrial materials, residue or trash ~~on the ground~~ that may have or could ~~contaminate or be washed away in~~ come into contact with storm water;

b. Leaks or spills from industrial equipment, drums, barrels, tanks or ~~similar~~ other containers that have occurred within the past three years;

c. Off-site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;

d. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas; ~~and~~

e. Evidence of, or the potential for, pollutants entering the drainage system~~.~~;

f. Evidence of pollutants discharging to surface waters at all facility outfalls, and the condition of and around the outfall, including flow dissipation measures to prevent scouring;

g. Review of training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of BMPs;

h. Certification of outfall evaluation for unauthorized discharges.

(NOTE: this was called the "certification of nonstorm water discharges" in the 2004 Industrial Storm Water General Permit)

(1) The SWPPP shall include an annual certification that all discharges (i.e., outfalls) have been evaluated for the presence of unauthorized discharges (i.e., discharges other than: storm water; the authorized nonstorm water discharges described in Part I B 1; or discharges covered under a separate VPDES permit, other than this permit.) The certification shall include:

(a) The date of the evaluation;

(b) A description of the evaluation criteria used;

(c) A list of the outfalls or on-site drainage points that were directly observed during the evaluation;

(d) A description of the results of the evaluation for the presence of unauthorized discharges; and

(e) The actions taken to eliminate unauthorized discharges, if any were identified (i.e., a floor drain was sealed, a sink drain was rerouted to sanitary, or an VPDES permit application was submitted for a cooling water discharge.)

(2) If the permittee is unable to provide the required certification, the director shall be notified no more than 14 days after the completion of the annual site compliance evaluation. The notification shall describe:

(a) The reason(s) why certification was not possible;

(b) The procedure that was followed in any evaluation attempted;

(c) The results of such evaluation or other relevant observations; and

(d) Any potential sources of unauthorized discharges that have not been eliminated.

(3) A copy of the notification shall be included in the SWPPP at the facility.

i. Results of both visual and any analytical monitoring done during the past year ~~must~~ shall be taken into consideration during the evaluation. ~~Storm water BMPs identified in the SWPPP must be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they must be inspected to see whether BMPs are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations must be inspected if possible.~~

2. Based on the results of the ~~inspection~~ evaluation, the SWPPP shall be modified as necessary (e.g., show additional controls on the map required by Part III B 2 c; revise the description of controls required by Part III B 6 to include additional or modified BMPs designed to correct problems identified). Revisions to the SWPPP shall be completed within ~~two weeks~~ 30 days following the ~~inspection~~ evaluation, unless permission for a later date is granted in writing by the director. If existing BMPs need to be modified or if additional BMPs are necessary, implementation ~~must~~ shall be completed before the next anticipated storm event, if practicable, but not more than ~~12 weeks~~ 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the ~~director~~ department;

3. Compliance evaluation report. A report shall be written summarizing the scope of the ~~inspection~~ evaluation, name(s) of personnel making the ~~inspection~~ evaluation, the ~~date(s)~~ date of the ~~inspection~~ evaluation, and ~~major~~ all observations relating to the implementation of the SWPPP, ~~and actions taken in accordance with Part III E 2 shall be made and retained as part of the SWPPP for at least three years from the date of the inspection~~ including elements stipulated in Part III E 1 (a) through (f) above. ~~Major observations should~~ Observations shall include such things as: the location(s) of discharges of pollutants from the site; location(s) of previously unidentified sources of pollutants; location(s) of BMPs that need to be maintained or repaired; location(s) of failed BMPs that ~~failed to operate as designed or proved inadequate for a particular location~~ need replacement; and location(s) where additional BMPs are needed ~~that did not exist at the time of inspection~~. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part II K~~;~~ and maintained with the SWPPP.

~~4. Where compliance evaluation schedules overlap with routine inspections required under Part III B 6 b(1)(e), the annual compliance evaluation may be used as one of the routine inspections.~~

F. Signature and plan review.

1. Signature/location. The plan shall be signed in accordance with Part II K, dated, and retained on-site at the facility covered by this permit in accordance with Part II B 2. A signature and date are required for both the initial plan preparation and for any revisions to the plan. For inactive facilities, the plan may be kept at the nearest office of the permittee.

2. Availability. The permittee shall make the SWPPP, annual site compliance ~~inspection~~ evaluation report, and other information available to the department upon request.

3. Required modifications. The director may notify the permittee at any time that the ~~plan does~~ SWPPP, BMPs, or other components of the facility's storm water program do not meet one or more of the ~~minimum~~ requirements of this permit. The notification shall identify ~~those~~ specific provisions of the permit that are not being met, ~~as well as the~~ and may include required modifications to the storm water program, additional monitoring requirements, and special reporting requirements. The permittee shall make ~~the~~ any required changes to the SWPPP within 60 days of receipt of such notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.

G. Maintaining an updated SWPPP.

1. The permittee shall review and amend the SWPPP as appropriate whenever:

~~1.~~ a. There is construction or a change in design, ~~construction,~~ operation, or maintenance at the facility that has a significant effect on the discharge, or the potential for the discharge, of pollutants from the facility;

b. Routine inspections or compliance evaluations determine that there are deficiencies in the BMPs;

~~2. During inspections, monitoring, or investigations by facility personnel or~~ c. Inspections by local, state, or federal officials ~~it is determined~~ determine that modifications to the SWPPP ~~is ineffective in eliminating or significantly minimizing pollutants from sources identified under Part III B 3, or is otherwise not achieving the general objectives of controlling pollutants in discharges from the facility~~ are necessary;

d. There is a spill, leak or other release at the facility;

e. There is an unauthorized discharge from the facility; or

f. The department notifies the permittee that a TMDL has been developed and applies to the permitted facility.

2. SWPPP modifications shall be made within 30 calendar days after discovery, observation or event requiring a SWPPP modification. Implementation of new or modified

BMPs (distinct from regular preventive maintenance of existing BMPs described in Part III C) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.

3. If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part II G of this permit.

~~H. Special pollution prevention plan requirements.~~

~~1. Additional requirements for storm water discharges associated with industrial activity that discharge into or through municipal separate storm sewer systems.~~

~~a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under VPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the permittee has been notified of such conditions.~~

~~b. Permittees that discharge storm water associated with industrial activity through a municipal separate storm sewer system, or a municipal system designated by the director shall make plans available to the municipal operator of the system upon request.~~

~~2. Additional requirements for storm water discharges associated with industrial activity from facilities subject to EPCRA § 313 reporting requirements.~~

~~Any potential pollutant sources for which the facility has reporting requirements under EPCRA 313 must be identified in the SWPPP in Part III B 3 (Summary of Potential Pollutant Sources). Note: this additional requirement is only applicable if the facility is subject to reporting requirements under EPCRA 313.~~

Part IV
Sector Specific Permit Requirements

The permittee must only comply with the additional requirements of Part IV (9VAC25-151-90 et seq.) that apply to the sector(s) of industrial activity located at the facility. These sector specific requirements are in addition to the "basic" requirements specified in Parts I, II and III of this permit. All numeric effluent limitations and benchmark monitoring concentration values reflect two significant digits, unless otherwise noted.

9VAC25-151-90. Sector A - Timber products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities generally classified under Standard Industrial Classification (SIC) Major Group 24 that are engaged in the following activities: cutting timber and pulpwood (those that have log storage or handling areas), mills, including merchant, lath, shingle, cooperage stock, planing, plywood and veneer, and producing lumber and wood materials; wood preserving, manufacturing wood buildings or mobile homes; and manufacturing finished articles made entirely of wood or related materials, except for wood kitchen cabinet manufacturers (SIC Code 2434), which are addressed under Sector W (9VAC25-151-300).

B. Special conditions.

1. Prohibition of nonstorm water discharges. Discharges of storm water from areas where there may be contact with chemical formulations sprayed to provide surface protection are not authorized by this permit. These discharges must be covered under a separate VPDES permit.

2. Authorized nonstorm water discharges. In addition to the discharges described in Part I B 1, the following nonstorm water discharges may be authorized by this permit provided the nonstorm water component of the discharge is in compliance with 9VAC25-151-90 C and the effluent limitations described in 9VAC25-151-90 D: discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: processing areas; treatment chemical storage areas; treated wood and residue storage areas; wet decking areas; dry decking areas; untreated wood and residue storage areas; and treatment equipment storage areas.

b. Summary of potential pollutant sources. Where information is available, facilities that have used chlorophenolic, creosote, or chromium-copper-arsenic formulations for wood surface protection or wood preserving activities on-site in the past ~~should~~ shall identify in the inventory the following: areas where contaminated soils, treatment equipment, and stored materials still remain, and the management practices employed to minimize the contact of these materials with storm water runoff.

2. Storm water controls. The description of storm water management controls shall address the following areas of the site: log, lumber and other wood product storage areas; residue storage areas; loading and unloading areas; material handling areas; chemical storage areas; and equipment/vehicle maintenance, storage and repair areas. Facilities that surface protect and/or preserve wood products ~~should~~ shall address specific BMPs for wood surface protection and preserving activities. The SWPPP ~~should~~ shall address the following minimum components:

a. Good housekeeping. Good housekeeping measures in storage areas, loading and unloading areas, and material handling areas ~~should~~ shall be designed to:

(1) Limit the discharge of wood debris;

(2) Minimize the leachate generated from decaying wood materials; and

(3) Minimize the generation of dust.

b. Routine facility inspections. Inspections at processing areas, transport areas, and treated wood storage areas of facilities performing wood surface protection and preservation activities ~~should~~ shall be performed monthly to assess the usefulness of practices in minimizing the deposit of treatment chemicals on unprotected soils and in areas that will come in contact with storm water discharges.

D. Numeric effluent limitations.

1. In addition to the numeric effluent limitations described in Part I A 1 c ~~and d~~, the following limitations shall be met by existing and new facilities.

Wet deck storage area runoff. Nonstorm water discharges from areas used for the storage of logs where water, without chemical additives, is intentionally sprayed or deposited on logs to deter decay or infestation by insects are required to meet the following effluent limitations: pH shall be within the range of 6.0-9.0, and there will be no discharge of debris. Chemicals are not allowed to be applied to the stored logs. The term "debris" is defined as woody material such as bark, twigs, branches, heartwood or sapwood that will not pass through a 2.54 cm (1 in.) diameter round opening and is present in the discharge from a wet deck storage area. Permittees subject to these numeric limitations ~~must~~ shall be in compliance with these limitations through the duration of permit coverage.

Table 90-1.
Sector A - Numeric Effluent Limitations.

Parameter	Effluent Limitations
Wet Decking Discharges at Log Storage and Handling Areas (SIC 2411)	
pH	6.0 - 9.0 s.u.
Debris (woody material such as bark, twigs, branches, heartwood, or sapwood)	No discharge of debris that will not pass through a 2.54 cm (1") diameter round opening.

2. Compliance monitoring requirements. In addition to the parameters listed above, the permittee shall provide an estimate of the total volume (in gallons) of the discharge sampled.

E. Benchmark monitoring and reporting requirements. Timber product facilities are required to monitor their storm water discharges for the pollutants of concern listed in the appropriate section of Table 90-2.

Table 90-2.
Sector A - Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut-Off~~ Benchmark Concentration
General Sawmills and Planing Mills (SIC 2421)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Zinc	120 µg/L
Wood Preserving Facilities (SIC 2491)	
Total Recoverable Arsenic	50 µg/L
Total Recoverable Chromium	16 µg/L
Total Recoverable Copper	18 µg/L
Phenols	16 µg/L
Total Suspended Solids (TSS)	100 mg/L
Log Storage and Handling Facilities (SIC 2411)	
Total Suspended Solids (TSS)	100 mg/L
Hardwood Dimension and Flooring Mills; Special Products Sawmills, not elsewhere classified; Millwork, Veneer, Plywood and Structural Wood; Wood Containers; Wood Buildings and Mobile Homes; Reconstituted Wood Products; and Wood Products Facilities not elsewhere classified (SIC Codes 2426, 2429, 2431-2439 (except 2434), 2448, 2449, 2451, 2452, 2493, and 2499).	
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-100. Sector B - Paper and allied products manufacturing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities generally classified under SIC Major Group 26 that are engaged in the following activities: the manufacture of pulps from wood and other cellulose fibers and from rags; the manufacture of paper

and paperboard into converted products, such as paper coated off the paper machine, paper bags, paper boxes and envelopes; and the manufacture of bags of plastic film and sheet.

B. Benchmark monitoring and reporting requirements. Paperboard mills are required to monitor their storm water discharges for the ~~pollutant~~ pollutants of concern listed in Table 100.

Table 100.
Sector B – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut Off~~ Benchmark Concentration
Paperboard Mills (SIC 2631)	
Biochemical Oxygen Demand (BOD_5)	30 mg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-110. Sector C - Chemical and allied products manufacturing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities engaged in manufacturing the following products and generally described by the SIC code shown:

1. Basic industrial inorganic chemicals (including SIC Code 281);

2. Plastic materials and synthetic resins, synthetic rubbers, and cellulosic and other humanmade fibers, except glass (including SIC Code 282);

3. Medicinal chemicals and pharmaceutical products, including the grading, grinding and milling of botanicals (including SIC Code 283).

4. Soap and other detergents, including facilities producing glycerin from vegetable and animal fats and oils; specialty cleaning, polishing, and sanitation preparations; surface active preparations used as emulsifiers, wetting agents, and finishing agents, including sulfonated oils; and perfumes, cosmetics, and other toilet preparations (including SIC Code 284);

5. Paints (in paste and ready-mixed form); varnishes; lacquers; enamels and shellac; putties, wood fillers, and sealers; paint and varnish removers; paint brush cleaners; and allied paint products (including SIC Code 285);

6. Industrial organic chemicals (including SIC Code 286);

7. Nitrogenous and phosphatic basic fertilizers, mixed fertilizer, pesticides, and other agricultural chemicals (including SIC Code 287);

8. Industrial and household adhesives, glues, caulking compounds, sealants, and linoleum, tile, and rubber cements from vegetable, animal, or synthetic plastics materials; explosives; printing ink, including gravure ink, screen process and lithographic inks; miscellaneous chemical preparations, such as fatty acids, essential oils, gelatin (except vegetable), sizes, bluing, laundry sours, and writing and stamp pad ink; industrial compounds, such as boiler and heat insulating compounds; and chemical supplies for foundries (including SIC Code 289); and

9. Ink and paints, including china painting enamels, India ink, drawing ink, platinum paints for burnt wood or leather work, paints for china painting, artists' paints and artists' water colors (SIC Code 3952, limited to those listed; for others in SIC Code 3952 not listed above, see Sector Y (9VAC25-151-320)).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: inks, paints, or substances (hazardous, nonhazardous, etc.) resulting from an on-site spill, including materials collected in drip pans; washwaters from material handling and processing areas; or washwaters from drum, tank, or container rinsing and cleaning.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: processing and storage areas; access roads, rail cars and tracks; areas where substances are transferred in bulk; and operating machinery.

b. Summary of potential pollutant sources. A description of the following sources and activities that have potential pollutants associated with them: loading, unloading and transfer of chemicals; outdoor storage of salt, pallets, coal, drums, containers, fuels, fueling stations; vehicle and equipment maintenance/cleaning areas; areas where the treatment, storage or disposal (on-site or off-site) of waste/wastewater occur; storage tanks and other containers; processing and storage areas; access roads, rail cars and tracks; areas where the transfer of substances in bulk occurs; and areas where machinery operates.

2. Storm water controls. ~~Nonstructural BMPs.~~ Good housekeeping. ~~At a minimum, the~~ The SWPPP shall include:

a. ~~Include a~~ A schedule for regular pickup and disposal of garbage and waste materials, or a description of other appropriate measures used to reduce the potential for the

discharge of storm water that has come into contact with garbage or waste materials;

b. ~~Include routine~~ Routine inspections of the condition of drums, tanks and containers for potential leaks.

D. Numeric effluent limitations. In addition to the numeric effluent limitations described in Part I A 1 c ~~and d~~, the following effluent limitations shall be met by existing and new discharges with phosphate fertilizer manufacturing runoff. The provisions of this paragraph are applicable to storm water discharges from the phosphate subcategory of the fertilizer manufacturing point source category ~~(40 CFR 418.10 (2002))~~ (40 CFR 418.10 (2006)). The term contaminated storm water runoff shall mean precipitation runoff, that during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products or waste product. The concentration of pollutants in storm water discharges shall not exceed the effluent limitations in Table 110-1.

Table 110-1.
Sector C – Numeric Effluent Limitations.

Parameter	Effluent Limitations	
	Daily Maximum	30-day Average
Phosphate Subcategory of the Fertilizer Manufacturing Point Source Category ~~(40 CFR 418.10 (2002))~~ (40 CFR 418.10 (2006)) - applies to precipitation runoff that, during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products or waste product (SIC 2874)		
Total Phosphorus (as P)	105 mg/L	35 mg/L
Fluoride	75 mg/L	25 mg/L

E. Benchmark monitoring and reporting requirements. Agricultural chemical manufacturing facilities; industrial inorganic chemical facilities; soaps, detergents, cosmetics, and perfume manufacturing facilities; and plastics, synthetics, and resin manufacturing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 110-2 below.

Table 110-2.
Sector C – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut-Off~~ Benchmark Concentration
Agricultural Chemicals (SIC 2873-2879)	
Total Nitrogen	2.2 mg/L
Total Recoverable Iron	~~1~~ 1.0 mg/L
Total Recoverable Zinc	120 µg/L
Phosphorus	~~2~~ 2.0 mg/L
Total Suspended Solids (TSS)	100 mg/L
Industrial Inorganic Chemicals (SIC 2812-2819)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	~~1~~ 1.0 mg/L
Total Nitrogen	2.2 mg/L
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L
Soaps, Detergents, Cosmetics, and Perfumes (SIC 2841-2844)	
Total Nitrogen	2.2 mg/L
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L
Plastics, Synthetics, and Resins (SIC 2821-2824)	
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-120. Sector D - Asphalt paving and roofing materials and lubricant manufacturers.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities engaged in the following activities: manufacturing asphalt paving and roofing materials, including those facilities commonly identified by SIC Codes 2951 and 2952; portable asphalt plants (also commonly identified by SIC Code 2951); and manufacturing miscellaneous products of petroleum and coal, including those facilities classified as SIC Code 2992 and 2999.

B. Limitations on coverage. The following storm water discharges associated with industrial activity are not authorized by this section of the permit:

1. Storm water discharges from petroleum refining facilities, including those that manufacture asphalt or asphalt products that are classified as SIC Code 2911;

2. Storm water discharges from oil recycling facilities; and

3. Storm water discharges associated with fats and oils rendering.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following item: routine facility inspections. Material storage and handling areas, liquid storage tanks,

hoppers or silos, vehicle and equipment maintenance, cleaning, and fueling areas, material handling vehicles, equipment and processing areas shall be inspected at least once per month, as part of the maintenance program. The permittee shall ensure that appropriate action is taken in response to the inspection by implementing tracking or follow-up procedures.

D. Numeric effluent limitations. In addition to the numeric effluent limitations listed in Part I A c ~~and d~~, discharges from areas where production of asphalt paving and roofing emulsions occurs may not exceed the limitations in Table 120-1.

Table 120-1.
Sector D – Numeric Effluent Limitations.

Parameter	Effluent Limitations	
	Daily Maximum	30-day Average
Discharges from areas where production of asphalt paving and roofing emulsions occurs (SIC 2951, 2952)		
Total Suspended Solids (TSS)	23 mg/L	15 mg/L
Oil and Grease	15 mg/L	10 mg/L
pH	6.0 - 9.0 s.u.	

E. Benchmark monitoring and reporting requirements. Asphalt paving and roofing materials manufacturing facilities are required to monitor their storm water discharges for the ~~pollutant~~ pollutants of concern listed in Table 120-2.

Table 120-2.
Sector D – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut Off~~ Benchmark Concentration
Asphalt Paving and Roofing Materials (SIC 2951, 2952)	
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-130. Sector E - Glass, clay, cement, concrete, and gypsum products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities generally classified under SIC Major Group 32 that are engaged in either manufacturing the following products or performing the following activities: flat, pressed, or blown glass or glass containers; hydraulic cement; clay products including tile and brick; pottery and porcelain electrical supplies; ~~concrete products;~~ gypsum products; nonclay refractories; minerals and earths, ground or otherwise treated; lime manufacturing; cut stone and stone products; asbestos products; and mineral wool and mineral wool insulation products.

~~Ready-mixed~~ Concrete block and brick facilities (SIC Code 3271), concrete products facilities, except block and brick (SIC Code 3272), and ready-mixed concrete facilities (SIC Code 3273) are not covered by this permit.

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items:

1. Site description and site map. The site map shall identify the locations of the following, if applicable: bag house or other dust control device; recycle/sedimentation pond, clarifier or other device used for the treatment of process wastewater and the areas that drain to the treatment device.

2. Storm water controls.

a. Good housekeeping.

(1) Facilities shall prevent or minimize the discharge of: spilled cement; aggregate (including sand or gravel); kiln dust; fly ash; settled dust; and other significant materials in storm water from paved portions of the site that are exposed to storm water. Measures used to minimize the presence of these materials may include regular sweeping, or other equivalent measures. The plan shall indicate the frequency of sweeping or equivalent measures. The frequency shall be determined based upon consideration of the amount of industrial activity occurring in the area and frequency of precipitation, but shall not be less than once per week if cement, aggregate, kiln dust; fly ash, or settled dust are being handled or processed.

(2) Facilities shall prevent the exposure of fine granular solids ~~(such as cement, kiln dust, etc.)~~ (such as cement, fly ash, kiln dust, etc.) to storm water. Where practicable, these materials shall be stored in enclosed silos or hoppers, buildings, or under other covering.

b. Routine facility inspections. The inspection shall take place while the facility is in operation and shall include all of the following areas that are exposed to storm water: material handling areas, aboveground storage tanks, hoppers or silos, dust collection/containment systems, truck wash down/equipment cleaning areas.

c. Certification of ~~nonstorm water~~ outfall evaluation for unauthorized discharges. Facilities engaged in production of ready-mix concrete, concrete block, brick or similar products shall include in the certification a description of measures that ensure that process wastewater that results from washing of trucks, mixers, transport buckets, forms or other equipment are discharged in accordance with a separate VPDES permit or are recycled.

C. Numeric effluent limitations. In addition to the numeric effluent limitations described by Part I A 1 c ~~and d~~, the following limitations shall be met by existing and new facilities: Cement manufacturing facility, material storage runoff. Any discharge composed of runoff that derives from the storage of materials including raw materials, intermediate products, finished products, and waste materials that are used in or derived from the manufacture of cement shall not exceed the limitations in Table 130-1. Runoff from the storage piles shall not be diluted with other storm water runoff or flows to meet these limitations. Any untreated overflow from facilities designed, constructed and operated to treat the volume of material storage pile runoff that is associated with a 10-year, 24-hour rainfall event shall not be subject to the TSS or pH limitations. Facilities subject to these numeric effluent limitations ~~must~~ shall be in compliance with these limits upon commencement of coverage and for the entire term of this permit.

Table 130-1.
Sector E – Numeric Effluent Limitations.

Parameter	Effluent Limitations	
	Daily Maximum	30-day Average
Cement Manufacturing Facility, Material Storage Runoff: Any discharge composed of runoff that derives from the storage of materials including raw materials, intermediate products, finished products, and waste materials that are used in or derived from the manufacture of cement.		
Total Suspended Solids (TSS)	50 mg/L	
pH	6.0 - 9.0 s.u.	

D. Benchmark monitoring and reporting requirements. Clay product manufacturers ~~(SIC 3245-3259, SIC 3261-3269)~~ (SIC 3251-3259, SIC 3261-3269) and ~~concrete~~ lime and gypsum product manufacturers ~~(SIC 3271-3275)~~ (SIC 3274, 3275) are required to monitor their storm water discharges for the pollutants of concern listed in Table 130-2.

Table 130-2.
Sector E – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut-Off~~ Benchmark Concentration
Clay Product Manufacturers ~~(SIC 3245-3259, 3261-3269)~~ (SIC 3251-3259, 3261-3269)	
Total Recoverable Aluminum	750 ug/L
Total Suspended Solids (TSS)	100 mg/L
~~Concrete~~ Lime and Gypsum Product Manufacturers ~~(SIC 3271-3275)~~ (SIC 3274, 3275)	
Total Suspended Solids (TSS)	100 mg/L
pH	6.0 - 9.0 s.u.
Total Recoverable Iron	~~1~~ 1.0 mg/L

9VAC25-151-140. Sector F - Primary metals.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from the following types of facilities in the primary metal industry, and generally described by the SIC code shown:

1. Steel works, blast furnaces, and rolling and finishing mills, including: steel wire drawing and steel nails and spikes; cold-rolled steel sheet, strip, and bars; and steel pipes and tubes (SIC Code 331).

2. Iron and steel foundries, including: gray and ductile iron, malleable iron, steel investment, and steel foundries not elsewhere classified (SIC Code 332).

3. Primary smelting and refining of nonferrous metals, including: primary smelting and refining of copper, and primary production of aluminum (SIC Code 333).

4. Secondary smelting and refining of nonferrous metals (SIC Code 334).

5. Rolling, drawing, and extruding of nonferrous metals, including: rolling, drawing, and extruding of copper; rolling, drawing and extruding of nonferrous metals except copper and aluminum; and drawing and insulating of nonferrous wire (SIC Code 335).

6. Nonferrous foundries (castings), including: aluminum die-castings, nonferrous die-castings, except aluminum, aluminum foundries, copper foundries, and nonferrous foundries, except copper and aluminum (SIC Code 336).

7. Miscellaneous primary metal products, not elsewhere classified, including: metal heat treating, and primary metal products, not elsewhere classified (SIC Code 339).

Activities covered include, but are not limited to, storm water discharges associated with coking operations, sintering plants, blast furnaces, smelting operations, rolling mills, casting operations, heat treating, extruding, drawing, or forging of all types of ferrous and nonferrous metals, scrap, and ore.

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following activities may be exposed to precipitation/surface runoff: storage or disposal of wastes such as spent solvents/baths, sand, slag/dross; liquid storage tanks/drums; processing areas including pollution control equipment (e.g., baghouses); and storage areas of raw materials such as coal, coke, scrap, sand, fluxes, refractories, or metal in any form. In addition, indicate sources where an accumulation of significant amounts of particulate matter could occur from such sources as furnace or oven emissions, losses from coal/coke handling operations, etc., and that could result in a discharge of pollutants to surface waters.

b. ~~Inventory of exposed materials~~ Summary of potential pollutant sources. The inventory of materials handled at the site that potentially may be exposed to precipitation/runoff ~~should~~ shall include areas where deposition of particulate matter from process air emissions or losses during material handling activities are possible.

2. Storm water controls.

a. Good housekeeping. The SWPPP ~~should~~ shall consider implementation of the following measures, or equivalent measures, where applicable.

(1) Establishment of a cleaning/maintenance program for all impervious areas of the facility where particulate matter, dust, or debris may accumulate, especially areas where material loading/unloading, storage, handling, and processing occur.

(2) The paving of areas where vehicle traffic or material storage occur, but where vegetative or other stabilization methods are not practicable. Sweeping programs shall be instituted in these areas as well.

(3) For unstabilized areas of the facility where sweeping is not practical, the permittee ~~should~~ shall consider using storm water management devices such as sediment traps, vegetative buffer strips, filter fabric fence, sediment filtering boom, gravel outlet protection, or other equivalent measures, that effectively trap or remove sediment.

b. Routine facility inspections. Inspections shall be conducted ~~at least quarterly~~ monthly, and shall address all potential sources of pollutants, including (if applicable):

(1) Air pollution control equipment (e.g., baghouses, electrostatic precipitators, scrubbers, and cyclones) ~~should~~ shall be inspected for any signs of degradation (e.g., leaks, corrosion, or improper operation) that could limit their efficiency and lead to excessive emissions. The permittee ~~should~~ shall consider monitoring air flow at inlets/outlets, or equivalent measures, to check for leaks (e.g., particulate deposition) or blockage in ducts;

(2) All process or material handling equipment (e.g., conveyors, cranes, and vehicles) ~~should~~ shall be inspected for leaks, drips, or the potential loss of materials; and

(3) Material storage areas (e.g., piles, bins or hoppers for storing coke, coal, scrap, or slag, as well as chemicals stored in tanks/drums) ~~should~~ shall be examined for signs of material losses due to wind or storm water runoff.

C. Benchmark monitoring and reporting requirements. Primary metals facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 140 below.

Table 140.
Sector F – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut-Off~~ Benchmark Concentration
Steel Works, Blast Furnaces, and Rolling and Finishing Mills (SIC 3312-3317)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L
Iron and Steel Foundries (SIC 3321-3325)	
Total Recoverable Aluminum	750 µg/L
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	~~1~~ 1.0 mg/L
Total Recoverable Zinc	120 µg/L
Rolling, Drawing, and Extruding of Nonferrous Metals (SIC 3351-3357)	
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L
Nonferrous Foundries (SIC 3363-3369)	
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-150. Sector G - Metal mining (ore mining and dressing).

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges

associated with industrial activity from active, temporarily inactive and inactive metal mining and ore dressing facilities including mines abandoned on federal lands, as classified under SIC Major Group 10. Coverage is required for facilities that discharge storm water that has come into contact with, or is contaminated by, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the operation. SIC Major Group 10 includes establishments primarily engaged in mining of ores, developing mines, or exploring for metallic minerals (ores) and also includes ore dressing and beneficiating operations, whether performed at colocated, dedicated mills or at separate mills, such as custom mills. For the purposes of this section, the term "metal mining" includes any of the separate activities listed above. Covered discharges include:

1. All storm water discharges from inactive ~~metal mining~~ facilities; ~~and~~

2. Storm water discharges from the following areas of active and temporarily inactive metal mining facilities: waste rock/overburden piles if composed entirely of storm water and not combining with mine drainage; topsoil piles; off-site haul/access roads; on-site haul/access roads constructed of waste rock/overburden if composed entirely of storm water and not combining with mine drainage; on-site haul/access roads not constructed of waste rock/overburden/spent ore except if mine drainage is used for dust control; runoff from tailings dams/dikes when not constructed of waste rock/tailings and no process fluids are present; runoff from tailings dams/dikes when constructed of waste rock/tailings and no process fluids are present if composed entirely of storm water and not combining with mine drainage; concentration building if no contact with material piles; mill site if no contact with material piles; office/administrative building and housing if mixed with storm water from industrial area; chemical storage area; docking facility if no excessive contact with waste product that would otherwise constitute mine drainage; explosive storage; fuel storage; vehicle/equipment maintenance area/building; parking areas (if necessary); power plant; truck wash areas if no excessive contact with waste product that would otherwise constitute mine drainage; unreclaimed, disturbed areas outside of active mining area; reclaimed areas released from reclamation bonds prior to December 17, 1990; and partially/inadequately reclaimed areas or areas not released from reclamation bonds;

3. Storm water discharges from exploration and development of metal mining and/or ore dressing facilities; and

4. Storm water discharges from facilities at mining sites undergoing reclamation.

B. Limitations on coverage. Storm water discharges from active metal mining facilities that are subject to the effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440 ~~(2002))~~ (2007)) are not authorized by this permit.

Note: Discharges that come in contact with overburden/waste rock are subject to 40 CFR Part 440 ~~(2002)~~ (2007), providing: the discharges drain to a point source (either naturally or as a result of intentional diversion), and they combine with mine drainage that is otherwise regulated under 40 CFR Part 440 ~~(2002)~~ (2007). Discharges from overburden/waste rock can be covered under this permit if they are composed entirely of storm water and do not combine with sources of mine drainage that are subject to 40 CFR Part 440 ~~(2002)~~ (2007).

C. Special Conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: adit drainage or contaminated springs or seeps. Contaminated seeps and springs discharging from waste rock dumps that do not directly result from precipitation events are not authorized by this permit.

D. Special definitions. The following definitions are only for this section of the general permit:

"Active metal mining facility" means a place where work or other related activity to the extraction, removal, or recovery of metal ore is being conducted. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun.

"Active phase" means activities including each step from extraction through production of a salable product.

"Exploration and ~~construction~~ development phase" entails exploration and land disturbance activities to determine the financial viability of a site. ~~Construction~~ Development includes the building of site access roads and removal of overburden and waste rock to expose mineable minerals.

"Final stabilization" - a site or portion of a site is “finally stabilized” when:

1. All soil-disturbing activities at the site have been completed and either of the two following criteria are met:

a. A uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or

(b) Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

2. When background native vegetation will cover less than 100% of the ground (e.g., arid areas, beaches), the 70% coverage criteria is adjusted as follows: if the native vegetation covers 50% of the ground, 70% of 50% (0.70 x

0.50 = 0.35) would require 35% total cover for final stabilization. On a beach with no natural vegetation, no stabilization is required.

"Inactive metal mining facility" means a site or portion of a site where metal mining and/or milling occurred in the past but is not an active facility as defined in this permit, and where the inactive portion is not covered by an active mining permit issued by the applicable ~~(federal or state)~~ federal or state governmental agency.

"Mining operation" typically consists of three phases, any one of which individually qualifies as a "mining activity." The phases are the exploration and ~~construction~~ development phase, the active phase, and the reclamation phase.

"Reclamation phase" means activities intended to return the land to its premining use.

"Temporarily inactive metal mining facility" means a site or portion of a site where metal mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable ~~(federal or state)~~ federal or state government agency.

E. Clearing, grading, and excavation activities. Clearing, grading, and excavation activities being conducted as part of the exploration and development phase of a mining operation are covered under this permit.

1. Management practices for clearing, grading, and excavation activities.

a. Selecting and installing control measures. A combination of erosion and sedimentation control measures are required to achieve maximum pollutant prevention and removal. All control measures shall be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices.

b. Removal of sediment. If sediment escapes the site, off-site accumulations of sediment shall be removed at a frequency sufficient to prevent off-site impacts.

c. Good housekeeping. Litter, debris, and chemicals shall be prevented from becoming a pollutant source in storm water discharges.

d. Velocity dissipation. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide a nonerosive flow velocity from disturbed areas and from any storm water retention or detention facilities to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

e. Retention and detention of storm water runoff. For drainage locations serving more than one acre, sediment basins and/or temporary sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the development area unless a sediment basin providing storage for a calculated volume of runoff from a two-year, 24-hour storm or 3,600 cubic feet of storage per acre drained is provided.

f. Temporary stabilization of disturbed areas. Stabilization measures shall be initiated immediately in portions of the site where development activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased. In arid, semiarid, and drought-stricken areas where initiating perennial vegetative stabilization measures is not possible within 14 days after construction activity has temporarily or permanently ceased, final vegetative stabilization measures shall be initiated as soon as possible. Until full vegetative stabilization is achieved, interim measures such as blankets and tackifiers shall be employed.

2. Requirements for inspection of clearing, grading, and excavation activities.

a. Inspection frequency. Inspections shall be conducted at least once every seven calendar days or at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater. Inspection frequency may be reduced to at least once every month if the entire site is temporarily stabilized, if runoff is unlikely due to winter conditions (e.g., site is covered with snow, ice, or the ground is frozen), or construction is occurring during seasonal arid periods in arid areas and semi-arid areas.

b. Qualified personnel for inspections. Inspections shall be conducted by qualified personnel. "Qualified personnel" means a person knowledgeable in the principles and practice of erosion and sediment control who possesses the skills to assess conditions at the construction site that could impact storm water quality and the effectiveness of any sediment and erosion control measures selected to control the quality of storm water discharges from the clearing, grading, and excavation activities.

c. Location of inspections. Inspections shall include all areas of the site disturbed by clearing, grading, and excavation activities and areas used for storage of materials that are exposed to precipitation. Sedimentation and erosion control measures identified in the SWPPP shall be observed to ensure proper operation. Discharge locations shall be inspected to ascertain whether erosion control measures are effective in preventing significant

impacts to state waters, where accessible. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

d. Inspection reports. For each inspection required above, an inspection report shall be completed. At a minimum, the inspection report shall include:

(1) The inspection date;

(2) Names, titles, and qualifications of personnel making the inspection;

(3) Weather information for the period since the last inspection (or note if it is the first inspection) including a best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches), and whether any discharges occurred;

(4) Weather information and a description of any discharges occurring at the time of the inspection;

(5) Location(s) of discharges of sediment or other pollutants from the site;

(6) Location(s) of BMPs that need to be maintained;

(7) Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;

(8) Location(s) where additional BMPs are needed that did not exist at the time of inspection; and

(9) Corrective action(s) required, including any changes to the SWPPP necessary and implementation dates.

A record of each inspection and of any actions taken in accordance with this section shall be retained as part of the SWPPP for at least three years from the date that permit coverage expires or is terminated. The inspection reports shall identify any incidents of noncompliance with the permit conditions. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the clearing, grading, and excavation activities are in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part II K of the permit.

3. Maintenance of controls for clearing, grading, and excavation activities.

a. Maintenance of BMPs. All erosion and sediment control measures and other protective measures identified in the SWPPP shall be maintained in effective operating condition. If site inspections required by subdivision 2 of this subsection identify BMPs that are not operating effectively, maintenance shall be performed as soon as possible and before the next storm event whenever practicable to maintain the continued effectiveness of storm water controls.

b. Modification of BMPs. Existing BMPs need to be modified or, if additional BMPs are necessary for any reason, implementation shall be completed before the next storm event whenever practicable. If implementation before the next storm event is impracticable, the situation shall be documented in the SWPPP and alternative BMPs shall be implemented as soon as possible.

c. Maintenance of sediment traps and ponds. Sediment from sediment traps or sedimentation ponds shall be removed when design capacity has been reduced by 50%.

4. Requirements for cessation of clearing, grading, and excavation activities.

a. Inspections and maintenance. Inspections and maintenance of BMPs associated with clearing, grading, and excavation activities being conducted as part of the exploration and construction phase of a mining operation shall continue until final stabilization has been achieved on all portions of the disturbed area.

b. Final stabilization. Stabilization measures shall be initiated immediately in portions of the site where development activities have permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has permanently ceased. In arid, semiarid, and drought-stricken areas where initiating perennial vegetative stabilization measures is not possible within 14 days after construction activity has temporarily or permanently ceased, final vegetative stabilization measures shall be initiated as soon as possible. Until final stabilization is achieved temporary stabilization measures, such as blankets and tackifiers, shall be used.

~~E.~~ F. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.

1. SWPPP requirements for active, inactive, and temporarily inactive metal mining facilities, and sites undergoing reclamation.

a. Site description.

(1) Activities at the facility. A description of the mining and associated activities taking place at the site that can potentially affect storm water discharges covered by this permit. The description shall include ~~the total acreage within the mine site; an estimate of the number of acres of disturbed land; an estimate of the total amount of land proposed to be disturbed throughout the life of the mine and~~ a general description of the location of the site relative to major transportation routes and communities.

(2) Site map. The site map shall identify the locations of the following, as appropriate: mining/milling site boundaries; access and haul roads; an outline of the drainage areas of each storm water outfall within the facility, and an indication of the types of discharges from the drainage areas; location(s) of all permitted discharges covered under an individual VPDES permit; equipment storage, fueling and maintenance areas; materials handling areas; outdoor manufacturing, storage or material disposal areas; storage areas for chemicals and explosives; areas used for storage of overburden, materials, soils or wastes; location of mine drainage (where water leaves mine) or any other process water; tailings piles/ponds, both proposed and existing; heap leach pads; points of discharge from the property for mine drainage/process water; surface waters; ~~and~~ boundary of tributary areas that are subject to effluent limitations guidelines; and location(s) of reclaimed areas.

b. Summary of potential pollutant sources. For each area of the mine/mill site where storm water discharges associated with industrial activities occur, the plan shall identify the types of pollutants likely to be present in significant amounts ~~must be identified~~ (e.g., heavy metals, sediment). The following factors ~~must~~ shall be considered: the mineralogy of the ore and waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced or discharged; the likelihood, if any, of contact with storm water; vegetation of site; history of significant leaks/spills of toxic or hazardous pollutants. A summary of any existing ore or waste rock/overburden characterization data and test results for potential generation of acid rock shall also be included. If the ore or waste rock/overburden characterization data are updated due to a change in the ore type being mined, the SWPPP shall be updated with the new data.

c. Storm water controls.

~~(1) Nonstructural BMPs.~~

~~(a)~~ (1) Routine facility inspections. ~~Active mining sites must~~ Sites shall be inspected at least monthly~~. Temporarily inactive sites must be inspected at least quarterly~~ unless adverse weather conditions make the site inaccessible.

~~(b)~~ (2) Employee training. Employee training shall be conducted at least annually at active mining and temporarily inactive sites. All employee training shall be documented in the SWPPP.

~~(2)~~ (3) Structural BMPs. Each of the following BMPs shall be considered in the SWPPP. The potential pollutants identified in subpart ~~E~~ F 1 b above shall determine the priority and appropriateness of the BMPs selected. ~~If it is determined that one or more of these BMPs are not appropriate for the facility, the plan must explain why it is not appropriate.~~ If BMPs are implemented or planned but are not listed here (e.g., substituting a less toxic chemical for a more toxic one), descriptions of them ~~must~~ shall be included in the SWPPP.

(a) Sediment and erosion control. The measures to consider include: diversion of flow away from areas susceptible to erosion (measures such as interceptor dikes and swales, diversion dikes, curbs and berms); stabilization methods to prevent or minimize erosion (such as temporary or permanent seeding; vegetative buffer strips; protection of trees; topsoiling; soil conditioning; contouring; mulching; geotextiles (matting, netting, or blankets); riprap; gabions; and retaining walls); and structural methods for controlling sediment (such as check dams; rock outlet protection; level spreaders; gradient terraces; straw bale barriers; silt fences; gravel or stone filter berms; brush barriers; sediment traps; grass swales; pipe slope drains; earth dikes; other controls such as entrance stabilization, waterway crossings or wind breaks; or other equivalent measures).

(b) Storm water diversion. A description of how and where storm water will be diverted away from potential pollutant sources to prevent storm water contamination. BMP options may include the following: interceptor dikes and swales; diversion dikes, curbs and berms; pipe slope drains; subsurface drains; drainage/storm water conveyance systems (channels or gutters, open top box culverts and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts) or equivalent measures.

(c) Management of runoff. The potential pollutant sources given in ~~9VAC25-151-150 E 1 b must~~ subdivision 1 b of this subsection shall be considered when determining reasonable and appropriate measures for managing runoff.

(d) Capping. ~~Where~~ When capping of a contaminant source is necessary, the source being capped and materials and procedures used to cap the contaminant source ~~must~~ shall be identified.

(e) Treatment. If treatment of a storm water discharge is necessary to protect water quality, include a description of the type and location of storm water treatment that will be used. Storm water treatments include the following: chemical or physical systems; oil/water separators; artificial wetlands; etc. The permittee is encouraged to use both passive and/or active treatment of storm water runoff. Treated runoff may be discharged as a storm water source regulated under this permit provided the discharge is not combined with discharges subject to effluent limitation guidelines for the Ore Mining and

Dressing Point Source Category (40 CFR Part 440 (2007)).

(f) Certification of discharge testing. The permittee ~~must~~ shall test or evaluate all outfalls covered under this permit for the presence of specific mining-related nonstorm water discharges such as seeps or adit discharges or discharges subject to effluent limitations guidelines (e.g., 40 CFR Part 440 (2007)), such as mine drainage or process water. Alternatively (if applicable), the permittee may certify in the SWPPP that a particular discharge ~~comprised~~ composed of commingled storm water and nonstorm water is covered under a separate VPDES permit; and that permit subjects the nonstorm water portion to effluent limitations prior to any commingling. This certification shall identify the nonstorm water discharges, the applicable VPDES permit(s), the effluent limitations placed on the nonstorm water discharge by the permit(s), and the points at which the limitations are applied.

~~2. SWPPP requirements for inactive metal mining facilities.~~

~~a. Site description.~~

~~(1) Activities at the facility. The SWPPP shall briefly describe the mining and associated activities that took place at the site that can potentially affect the storm water discharges covered by this permit. The following must be included: approximate dates of operation; total acreage within the mine and/or processing site; estimate of acres of disturbed earth; activities currently occurring on site (e.g., reclamation); a general description of site location with respect to transportation routes and communities.~~

~~(2) Site map. The site map shall identify the locations of the following, as appropriate: mining/milling site boundaries; access and haul roads; an outline of the drainage areas of each storm water outfall within the facility, and an indication of the types of discharges from the drainage areas; equipment storage, fueling and maintenance areas; materials handling areas; outdoor manufacturing, storage or material disposal areas; storage areas for chemicals and explosives; areas used for storage of overburden, materials, soils or wastes; location of mine drainage (where water leaves mine) or any other process water; tailings piles/ponds, both proposed and existing; heap leach pads; points of discharge from the property for mine drainage/process water; surface waters; and boundary of tributary areas that are subject to effluent limitations guidelines.~~

~~b. Summary of potential pollutant sources. For each area of the mine/mill site where storm water discharges associated with industrial activities occur, the types of pollutants likely to be present in significant amounts must be identified (e.g., heavy metals, sediment). The following factors must be considered: the mineralogy of the ore and waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced or discharged; the likelihood, if any, of contact with storm water; vegetation of site; history of significant leaks/spills of toxic or hazardous pollutants. A summary of any existing ore or waste rock/overburden characterization data and test results for potential generation of acid rock shall also be included. If the ore or waste rock/overburden characterization data are updated due to a change in the ore type being mined, the SWPPP shall be updated with the new data.~~

~~c. Storm water controls.~~

~~(1) Nonstructural BMPs. The nonstructural controls in the general requirements at Part III B 6 b 1 are not required for inactive facilities.~~

~~(2) Structural BMPs. Each of the following BMPs shall be considered in the SWPPP. The potential pollutants identified in subpart E 2 b above shall determine the priority and appropriateness of the BMPs selected. If it is determined that one or more of these BMPs are not appropriate for the facility, the plan must explain why it is not appropriate. If BMPs are implemented or planned but are not listed here (e.g., substituting a less toxic chemical for a more toxic one), descriptions of them must be included in the SWPPP.~~

~~(a) Sediment and erosion control. The measures to consider include: diversion of flow away from areas susceptible to erosion (measures such as interceptor dikes and swales, diversion dikes, curbs and berms); stabilization methods to prevent or minimize erosion (such as temporary or permanent seeding; vegetative buffer strips; protection of trees; topsoiling; soil conditioning; contouring; mulching; geotextiles (matting; netting; or blankets); riprap; gabions; and retaining walls; and structural methods for controlling sediment (such as check dams; rock outlet protection; level spreaders; gradient terraces; straw bale barriers; silt fences; gravel or stone filter berms; brush barriers; sediment traps; grass swales; pipe slope drains; earth dikes; other controls such as entrance stabilization, waterway crossings or wind breaks; or other equivalent measures).~~

~~(b) Storm water diversion. A description of how and where storm water will be diverted away from potential pollutant sources to prevent storm water contamination. BMP options may include the following: interceptor dikes and swales; diversion dikes, curbs and berms; pipe slope drains; subsurface drains; drainage/storm water conveyance systems (channels or gutters, open top box culverts and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts) or equivalent measures.~~

~~(c) Management of runoff. The potential pollutant sources given in 9VAC25-151-150 E 2 b must be considered when determining reasonable and appropriate measures for managing runoff.~~

~~(d) Capping. Where capping of a contaminant source is necessary, the source being capped and materials and procedures used to cap the contaminant source must be identified.~~

~~(e) Treatment. If treatment of a storm water discharge is necessary to protect water quality, include a description of the type and location of storm water treatment that will be used. Storm water treatments include the following: chemical or physical systems; oil/water separators; artificial wetlands; etc.~~

~~d. Comprehensive site compliance evaluation. Annual site compliance evaluations may be impractical for inactive mining sites due to remote location/inaccessibility of the site, in which case the permittee must conduct the evaluation at least once every three years. The SWPPP must be documented to explain why annual compliance evaluations are not possible. If the evaluations will be conducted more often than every three years, the frequency of evaluations must be specified.~~

2. Termination of permit coverage.

a. Termination of permit coverage for sites reclaimed after December 17, 1990. A site or a portion of a site that has been released from applicable state or federal reclamation requirements after December 17, 1990, is no longer required to maintain coverage under this permit, provided that the covered storm water discharges do not have the potential to cause or contribute to violations of state water quality standards. If the site or portion of a site reclaimed after December 17, 1990, was not subject to reclamation requirements, the site or portion of the site is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed as defined in subpart 2 b below.

b. Termination of permit coverage for sites reclaimed before December 17, 1990. A site or portion of a site that was released from applicable state or federal reclamation requirements before December 17, 1990, or that was otherwise reclaimed before December 17, 1990, is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed. A site or portion of a site is considered to have been reclaimed if storm water runoff that comes into contact with (i) raw materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state water quality standards, (ii) soil-disturbing activities related to mining at the sites or portion of the site have been completed, (iii) the site or portion of the site has been stabilized to minimize soil erosion, and (iv) as appropriate depending on location, size, and the potential to contribute pollutants to storm water discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use.

~~F.~~ G. Benchmark monitoring and reporting requirements.

1. Copper ore mining and dressing facilities. Active copper ore mining and dressing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 150-1 below.

2. Discharges from waste rock and overburden piles at active ~~ore mining and dressing facilities~~ sites, inactive sites, and sites undergoing reclamation. ~~Active ore mining and dressing facilities with discharges~~ Discharges from waste rock and overburden piles ~~must perform analytic monitoring~~ at active sites, inactive sites, and sites undergoing reclamation shall be analyzed for the parameters listed in Table ~~150-1~~ 150-2. Facilities ~~must~~ shall also monitor for the parameters listed in Table ~~150-2~~ 150-3. ~~However, the~~ The director may also notify the facility that additional monitoring must be performed to accurately characterize the quality and quantity of pollutants discharged from the waste rock/overburden piles. ~~Monitoring requirements for discharges from waste rock and overburden piles are not eligible for the waiver in Part I A 3 b.~~

Table 150-1.
Sector G – Benchmark Monitoring Requirements - Copper Ore Mining and Dressing Facilities.

Pollutants of Concern	~~Monitoring Cut Off~~ Benchmark Concentration
Active Copper Ore Mining and Dressing Facilities (SIC 1021)	
Total Suspended Solids (TSS)	100 mg/L
~~Discharges From Waste Rock and Overburden Piles From Active Ore Mining or Dressing Facilities Iron Ores; Copper Ores; Lead and Zinc Ores; Gold and Silver Ores; Ferroalloy Ores Except Vanadium; Miscellaneous Metal Ores (SIC Codes 1011, 1021, 1031, 1041, 1044, 1061, 1081, 1094, 1099)~~	
~~Total Suspended Solids (TSS)~~	~~100 mg/L~~
~~Turbidity (NTUs)~~	~~5 NTUs above background~~
~~PH~~	~~6.0 – 9.0 s.u.~~
~~Hardness (as $CaCO_3$)~~	~~no benchmark value~~

~~Total Recoverable Antimony~~	~~640 µg/L~~
~~Total Recoverable Arsenic~~	~~50 µg/L~~
~~Total Recoverable Beryllium~~	~~130 µg/L~~
~~Total Recoverable Cadmium~~	~~3.9 µg/L~~
~~Total Recoverable Copper~~	~~18 µg/L~~
~~Total Recoverable Iron~~	~~1.0 mg/L~~
~~Total Recoverable Lead~~	~~120 µg/L~~
~~Total Recoverable Manganese~~	~~1.0 mg/L~~
~~Total Recoverable Mercury~~	~~2.4 µg/L~~
~~Total Recoverable Nickel~~	~~1.4 mg/L~~
~~Total Recoverable Selenium~~	~~20 µg/L~~
~~Total Recoverable Silver~~	~~4.1 µg/L~~
~~Total Recoverable Zinc~~	~~120 µg/L~~

Table 150-2.
Sector G – Benchmark Monitoring Requirements - Discharges from Waste Rock and Overburden Piles from Active Ore Mining or Dressing Facilities, Inactive Ore Mining or Dressing Facilities, and Sites Undergoing Reclamation.

Pollutants of Concern	Benchmark Concentration
Iron Ores; Copper Ores; Lead and Zinc Ores; Gold and Silver Ores; Ferroalloy Ores Except Vanadium; Miscellaneous Metal Ores (SIC Codes 1011, 1021, 1031, 1041, 1044, 1061, 1081, 1094, 1099)	
Total Suspended Solids (TSS)	100 mg/L
Turbidity (NTUs)	50 NTU
pH	6.0 - 9.0 s.u.
Hardness (as $CaCO_3$)	no benchmark value
Total Recoverable Antimony	640 µg/L
Total Recoverable Arsenic	50 µg/L
Total Recoverable Beryllium	130 µg/L
Total Recoverable Cadmium	2.1 µg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Mercury	1.4 µg/L
Total Recoverable Nickel	470 µg/L
Total Recoverable Selenium	5.0 µg/L
Total Recoverable Silver	3.8 µg/L
Total Recoverable Zinc	120 µg/L

Table ~~150-2~~ 150-3.
Sector G – Additional Monitoring Requirements for Discharges From Waste Rock and Overburden Piles From Active Ore Mining or Dressing Facilities, Inactive Ore Mining or Dressing Facilities, and Sites Undergoing Reclamation.

Type of Ore Mined	Pollutants of Concern		
	TSS (mg/L)	pH	Metals, Total Recoverable
Tungsten Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Nickel Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Aluminum Ore	X	X	Iron.
Mercury Ore	X	X	Nickel (H).
Iron Ore	X	X	Iron (Dissolved).
Platinum Ore			Cadmium (H), Copper (H), Mercury, Lead (H), Zinc (H).
Titanium Ore	X	X	Iron, Nickel (H), Zinc (H).
Vanadium Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).

Copper, Lead, Zinc, Gold, Silver and Molybdenum	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Mercury, Zinc (H).
Uranium, Radium and Vanadium	X	X	Chemical Oxygen Demand, Arsenic, Radium (Dissolved and Total Recoverable), Uranium, Zinc (H).
Note: (H) indicates that hardness must also be measured when this pollutant is measured.			

9VAC25-151-160. Sector H - Coal mines and coal mining-related facilities.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from coal mining-related areas (SIC Major Group 12) if (i) they are not subject to effluent limitations guidelines under 40 CFR Part 434 ~~(2002)~~ (2007) or (ii) they are not subject to the standards of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) and the Virginia Department of Mines, Minerals and Energy's individual permit requirements. The requirements of this section shall apply to storm water discharges from coal mining-related activities exempt from SMCRA, including the public financed exemption, the 16-2/3% exemption, the private use exemption, the under 250 tons exemption, the nonincidental tipple exemption, and the exemption for coal piles and preparation plants associated with the end user. Storm water discharges from the following portions of eligible coal mines and coal mining related facilities may be eligible for this permit: haul roads (nonpublic roads on which coal or coal refuse is conveyed), access roads (nonpublic roads providing light vehicular traffic within the facility property and to public roadways), railroad spurs, sidings, and internal haulage lines (rail lines used for hauling coal within the facility property and to off-site commercial railroad lines or loading areas); conveyor belts, chutes, and aerial tramway haulage areas (areas under and around coal or refuse conveyor areas, including transfer stations); and equipment storage and maintenance yards, coal handling buildings and structures, coal tipples, coal loading facilities and inactive coal mines and related areas (abandoned and other inactive mines, refuse disposal sites and other mining-related areas).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: discharges from pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not result from precipitation events and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff:

(1) Drainage direction and discharge points from all applicable mining-related areas described in ~~9VAC25-151-160 A~~ subpart A above;

(2) Acidic spoil, refuse or unreclaimed disturbed areas; and

(3) Liquid storage tanks containing pollutants such as caustics, hydraulic fluids and lubricants.

b. Summary of potential pollutant sources. A description of the potential pollutant sources from the following activities: truck traffic on haul roads and resulting generation of sediment subject to runoff and dust generation; fuel or other liquid storage; pressure lines containing slurry, hydraulic fluid or other potential harmful liquids; and loading or temporary storage of acidic refuse/spoil.

2. Storm water controls.

a. Good housekeeping. As part of the facility's good housekeeping program, the permittee ~~should~~ shall consider the following: using sweepers, covered storage, and watering of haul roads to minimize dust generation; and conservation of vegetation (where possible) to minimize erosion.

b. Preventive maintenance. The permittee shall also perform inspections of storage tanks and pressure lines for fuels, lubricants, hydraulic fluid or slurry to prevent leaks due to deterioration or faulty connections; or other equivalent measures.

3. Comprehensive site compliance evaluation. The evaluation program shall also include inspections for pollutants entering the drainage system from activities located on or near coal mining-related areas. Among the areas to be inspected: haul and access roads; railroad spurs, sliding and internal hauling lines; conveyor belts, chutes and aerial tramways; equipment storage and maintenance yards; coal handling buildings/structures; and inactive mines and related areas.

D. Benchmark monitoring and reporting requirements. Coal mining facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 160.

Table 160. Sector H - Benchmark Monitoring Requirements.	
Pollutants of Concern	~~Monitoring Cut-Off~~ Benchmark Concentration
Coal Mines and Related Areas (SIC 1221-1241)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	~~1~~ 1.0 mg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-170. Sector I - Oil and gas extraction and refining.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from oil and gas extraction and refining facilities listed under SIC Major Group 13 which have had a discharge of a reportable quantity (RQ) of oil or a hazardous substance for which notification is required under 40 CFR 110.6 ~~(2002)~~ (2007), 40 CFR 117.21 ~~(2002)~~ (2007) or 40 CFR 302.6 ~~(2002)~~ (2007). These include oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with any overburden raw material, intermediate products, finished products, by-products or waste products located on the site of such operations. Industries in SIC Major Group 13 include the extraction and production of crude oil, natural gas, oil sands and shale; the production of hydrocarbon liquids and natural gas from coal; and associated oilfield service, supply and repair industries. This section also covers petroleum refineries listed under SIC Code 2911.

Contaminated storm water discharges from petroleum refining or drilling operations that are subject to nationally established BAT or BPT guidelines found at 40 CFR Part 419 ~~(2002)~~ (2006) and 40 CFR Part 435 ~~(2002)~~ (2007) respectively are not authorized by this permit.

Note: most contaminated discharges from petroleum refining and drilling facilities are subject to these effluent guidelines and are not eligible for coverage under this permit.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: discharges of vehicle and equipment washwater, including tank cleaning operations. Alternatively, washwater discharges must be authorized under a separate VPDES permit, or be discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: reportable quantity (RQ) releases; locations used for the treatment, storage or disposal of wastes; processing areas and storage areas; chemical mixing areas; construction and drilling areas; all areas subject to the effluent guidelines requirement of "No Discharge" in accordance with 40 CFR 435.32 ~~(2002)~~ (2007) and the structural controls to achieve compliance with the "No Discharge" requirement.

b. Summary of potential pollutant sources.

(1) The plan shall also include a description of the potential pollutant sources from the following activities: chemical, cement, mud or gel mixing activities; drilling or mining activities; and equipment cleaning and rehabilitation activities.

(2) The plan ~~must~~ shall include information about the RQ release which triggered the permit application requirements, including: the nature of the release (e.g., spill of oil from a drum storage area); the amount of oil or hazardous substance released; amount of substance recovered; date of the release; cause of the release (e.g., poor handling techniques and lack of containment in the area); areas affected by the release, including land and waters; procedure to cleanup release; actions or procedures implemented to prevent or improve response to a release; and remaining potential contamination of storm water from release (taking into account human health risks, the control of drinking water intakes, and the designated uses of the receiving water).

2. Storm water controls.

a. Routine facility inspections. All equipment and areas addressed in the SWPPP shall be inspected at ~~a minimum of six-month intervals~~ least monthly. Equipment and vehicles which store, mix (including all on-site and off-site mixing tanks) or transport chemicals/hazardous materials (including those transporting supplies to oil field activities) will be inspected ~~at least quarterly~~ on a monthly basis. For temporarily or permanently inactive oil and gas extraction facilities within Major SIC Group 13, which are remotely located and unstaffed, the inspections shall be performed at least annually.

b. Sediment and erosion control. ~~Unless covered by another VPDES permit, the additional~~ The erosion control requirement for well drillings and sand/shale mining areas are as follows:

(1) Site description. Each plan shall provide a description of the following:

(a) A description of the nature of the exploration activity;

(b) Estimates of the total area of the site and the area of the site that is expected to be disturbed due to the exploration activity;

(c) An estimate of the runoff coefficient of the site;

(d) A site map indicating drainage patterns and approximate slopes; and

(e) The name of all receiving water(s).

(2) Vegetative controls. The SWPPP shall include a description of vegetative practices designed to preserve existing vegetation where attainable and revegetate open areas as soon as practicable after grade drilling. Such practices may include: temporary or permanent seeding, mulching, sod stabilization, vegetative buffer strips, tree protection practices. The permittee shall initiate appropriate vegetative practices on all disturbed areas within 14 calendar days of the last activity at that area.

(3) Off-site vehicle tracking of sediments shall be minimized.

(4) Procedures in the plan shall provide that all erosion controls on the site are inspected at least once every seven calendar days.

c. Good housekeeping measures.

(1) Vehicle and equipment storage areas. The storage of vehicles and equipment awaiting or having completed maintenance ~~must~~ shall be confined to designated areas (delineated on the site map). The plan ~~must~~ shall describe measures that prevent or minimize contamination of the storm water runoff from these areas (e.g., drip pans under equipment, indoor storage, use of berms and dikes, or other equivalent measures.

(2) Materials and chemical storage areas. Storage units of all chemicals and materials ~~must~~ shall be maintained in good condition so as to prevent contamination of storm water. Hazardous materials ~~must~~ shall be plainly labeled.

(3) Chemical mixing areas. The plan ~~must~~ shall describe measures that prevent or minimize contamination of the storm water runoff from chemical mixing areas.

d. Contact with waste water pollutants at exploration and production facilities. The permittee shall take all measures necessary to prevent the discharge of storm water that has come into contact with waste water pollutants from any sources associated with production, field exploration, drilling, well completion, or well treatment (i.e., produced water, drilling muds, drill cuttings, and produced sand).

D. Benchmark monitoring and reporting requirements. Oil refining facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 170.

Table 170.
Sector I - Benchmark Monitoring Requirements.

Pollutants of Concern	Benchmark Concentration
Oil Refining (SIC 2911)	
Total Recoverable Lead	120 µg/L
Total Recoverable Nickel	470 µg/L
Total Recoverable Zinc	120 µg/L
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
Total Nitrogen	2.2 mg/L
Total Suspended Solids (TSS)	100 mg/L

Sector J – Mineral Mining and Dressing ~~(facilities described by this sector are not covered by this general permit – see 9VAC25-190, Nonmetallic Mineral Mining General Permit)~~ (SIC 1411-1499). Facilities described by this sector are not covered by this general permit. Facilities with storm water discharges that fall under this sector should apply for coverage under the VPDES Nonmetallic Mineral Mining General Permit (VAG 84).

9VAC25-151-180. Sector K - Hazardous waste treatment, storage, or disposal facilities.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities that treat, store, or dispose of hazardous wastes, including those that are operating under interim status or a permit under subtitle C of RCRA (Industrial Activity Code "HZ"). Disposal facilities that have been properly closed and capped, and have no significant materials exposed to storm water, are considered inactive and do not require permits.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general prohibition of nonstorm water discharges in Part I B 1, the following discharges are not covered by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory-derived wastewater and contact washwater from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

C. Definitions.

"Contaminated storm water" means storm water that comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in this section. Some specific areas of a landfill that may produce

contaminated storm water include, but are not limited to: the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

"Drained free liquids" means aqueous wastes drained from waste containers (e.g., drums, etc.) prior to landfilling.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine or a cave as these terms are defined in 40 CFR 257.2 ~~(2002)~~ (2006), 40 CFR 258.2 ~~(2002)~~ (2006) and 40 CFR 260.10 ~~(2002)~~ (2007).

"Landfill wastewater" as defined in 40 CFR Part 445 ~~(2002)~~ (2007) (Landfills Point Source Category) means all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, noncontaminated storm water, contaminated ground water, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Noncontaminated storm water" means storm water that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined above. Noncontaminated storm water includes storm water that flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

"Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

"Surface impoundment" means a facility or part of a facility that is a natural topographic depression, man-made excavation or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.

D. Numeric effluent limitations. As set forth at 40 CFR Part 445 Subpart A ~~(2002)~~ (2007), the numeric limitations in Table 180-1 apply to contaminated storm water discharges from hazardous waste landfills subject to the provisions of RCRA Subtitle C at 40 CFR Parts 264 (Subpart N) ~~(2002)~~ (2007) and 265 (Subpart N) ~~(2002)~~ (2007) except for any of the facilities described in subdivisions 1 through 4 of this subsection:

1. Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

2. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N ~~(2002)~~ (2007) as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

3. Landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR Part 437 ~~(2002)~~ (2007) so long as the CWT facility commingles the landfill wastewater with other nonlandfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

4. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Table 180-1.
Sector K – Numeric Effluent Limitations.

Parameter	Effluent Limitations	
	Maximum Daily	Maximum Monthly Average
Hazardous Waste Treatment, Storage, or Disposal Facilities (Industrial Activity Code "HZ") Subject to the Provisions of 40 CFR Part 445 Subpart A ~~(2002)~~ (2007).		
Biochemical Oxygen Demand (BOD_5)	220 mg/L	56 mg/L
Total Suspended Solids (TSS)	88 mg/L	27 mg/L

Ammonia	10 mg/L	4.9 mg/L
Alpha Terpineol	0.042 mg/L	0.019 mg/L
Aniline	0.024 mg/L	0.015 mg/L
Benzoic Acid	0.119 mg/L*	0.073 mg/L
Naphthalene	0.059 mg/L	0.022 mg/L
p-Cresol	0.024 mg/L	0.015 mg/L
Phenol	0.048 mg/L	0.029 mg/L
Pyridine	0.072 mg/L	0.025 mg/L
Arsenic (Total)	1.1 mg/L	0.54 mg/L
Chromium (Total)	1.1 mg/L	0.46 mg/L
Zinc (Total)	0.535 mg/L*	0.296 mg/L*
pH	Within the range of 6.0 - 9.0 s.u.	

* - These effluent limitations are three significant digits for reporting purposes.

E. Benchmark monitoring and reporting requirements. Permittees with hazardous waste treatment, storage, or disposal facilities (TSDFs) are required to monitor their storm water discharges for the pollutants of concern listed in Table 180-2. These benchmark monitoring cutoff concentrations apply to storm water discharges associated with industrial activity other than contaminated storm water discharges from landfills subject to the numeric effluent limitations set forth in Table 180-1.

Table 180-2.
Sector K – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut-Off~~ Benchmark Concentration
Hazardous Waste Treatment, Storage, or Disposal Facilities (Industrial Activity Code "HZ")	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
Total Suspended Solids (TSS)	100 mg/L
Total Organic Carbon (TOC)	110 mg/L
Total Recoverable Arsenic	50 µg/L
Total Recoverable Cadmium	~~3.9~~ 2.1 µg/L
Total Cyanide	22 µg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Mercury	~~2.4~~ 1.4 µg/L
Total Recoverable Selenium	~~20~~ 5.0 µg/L
Total Recoverable Silver	~~4.1~~ 3.8 µg/L

9VAC25-151-190. Sector L - Landfills, land application sites and open dumps.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from waste disposal at landfills, land application sites, and open dumps that receive or have received industrial wastes (Industrial Activity Code "LF"), including sites subject to regulation under Subtitle D of RCRA. Open dumps are solid waste disposal units that are not in compliance with state/federal criteria established under RCRA Subtitle D. Landfills, land application sites, and open dumps that have storm water discharges from other types of industrial activities such as vehicle maintenance, truck washing, and/or recycling may be subject to additional requirements specified elsewhere in this permit.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact washwater from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

C. Definitions.

"Contaminated storm water" means storm water that comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined below. Some specific areas of a landfill that may produce contaminated storm water include, but are not limited to: the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

"Drained free liquids" means aqueous wastes drained from waste containers (e.g., drums, etc.) prior to landfilling.

~~"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.~~

~~"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, salt bed formation, an underground mine or a cave as these~~

~~terms are defined in 40 CFR 257.2 (2002), 40 CFR 258.2 (2002) and 40 CFR 260.10 (2002).~~

"Landfill wastewater" as defined in 40 CFR Part 445 ~~(2002)~~ (2007) (Landfills Point Source Category) means all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, noncontaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill process wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Noncontaminated storm water" means storm water that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined above. Noncontaminated storm water includes storm water that flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

~~"Surface impoundment" means a facility or part of a facility that is a natural topographic depression, man-made excavation or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.~~

D. Storm water pollution prevention plan requirements. In addition to the requirements in Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: active and closed landfill cells or trenches; active and closed land application areas; locations where open dumping is occurring or has occurred; locations of any known leachate springs or other areas where uncontrolled leachate may commingle with runoff; and leachate collection and handling systems.

b. Summary of potential pollutant sources. The SWPPP shall also include a description of potential pollutant sources associated with any of the following: fertilizer, herbicide and pesticide application; earth/soil moving; waste hauling and loading/unloading; outdoor storage of significant materials including daily, interim and final cover material stockpiles as well as temporary waste storage areas; exposure of active and inactive landfill and land application areas; uncontrolled leachate flows; and failure or leaks from leachate collection and treatment systems.

2. Storm water controls.

a. Preventive maintenance program. As part of the preventive maintenance program, the permittee shall maintain: all containers used for outdoor chemical/significant materials storage to prevent leaking; all elements of leachate collection and treatment systems to prevent commingling of leachate with storm water; and the integrity and effectiveness of any intermediate or final cover (including making repairs to the cover as necessary to minimize the effects of settlement, sinking, and erosion).

b. Good housekeeping measures. As part of the good housekeeping program, the permittee shall consider providing protected storage areas for pesticides, herbicides, fertilizer and other significant materials.

c. Routine facility inspections.

(1) Inspections of active sites. Operating landfills, open dumps, and land application sites shall be inspected at least once every seven days. Qualified personnel shall inspect areas of landfills that have not yet been finally stabilized, active land application areas, areas used for storage of materials/wastes that are exposed to precipitation, stabilization and structural control measures, leachate collection and treatment systems, and locations where equipment and waste trucks enter and exit the site. Erosion and sediment control measures shall be observed to ensure they are operating correctly. For stabilized sites and areas where land application has been completed, or where the climate is seasonally arid (annual rainfall averages from 0 to 10 inches) or semi-arid (annual rainfall averages from 10 to 20 inches), inspections shall be conducted at least once every month.

(2) Inspections of inactive sites. Inactive landfills, open dumps, and land application sites shall be inspected at least quarterly. Qualified personnel shall inspect landfill (or open dump) stabilization and structural erosion control measures and leachate collection and treatment systems, and all closed land application areas.

d. Recordkeeping and internal reporting procedures. Landfill and open dump owners shall provide for a tracking system for the types of wastes disposed of in each cell or trench of a landfill or open dump. Land application site owners shall track the types and quantities of wastes applied in specific areas.

e. ~~Nonstorm water discharge test certification~~ Certification of outfall evaluation for unauthorized discharges. The discharge test and certification ~~must~~ shall

also be conducted for the presence of leachate and vehicle washwater.

f. Sediment and erosion control plan. Landfill and open dump owners shall provide for temporary stabilization of materials stockpiled for daily, intermediate, and final cover. Stabilization practices to consider include, but are not limited to, temporary seeding, mulching, and placing geotextiles on the inactive portions of the stockpiles. Landfill and open dump owners shall provide for temporary stabilization of inactive areas of the landfill or open dump which have an intermediate cover but no final cover. Landfill and open dump owners shall provide for temporary stabilization of any landfill or open dumping areas which have received a final cover until vegetation has established itself. Land application site owners shall also stabilize areas where waste application has been completed until vegetation has been established.

g. Comprehensive site compliance evaluation. Areas contributing to a storm water discharge associated with industrial activities at landfills, open dumps and land application sites shall be evaluated for evidence of, or the potential for, pollutants entering the drainage system.

E. Numeric effluent limitations. As set forth at 40 CFR Part 445 Subpart B ~~(2002)~~ (2007), the numeric limitations in Table 190-1 apply to contaminated storm water discharges from municipal solid waste landfills (MSWLFs) that have not been closed in accordance with 40 CFR 258.60 ~~(2002)~~ (2006), and contaminated storm water discharges from those landfills that are subject to the provisions of 40 CFR Part 257 ~~(2002)~~ (2006) (these include CDD landfills (also known as C&D landfills), and industrial landfills) except for discharges from any of the facilities described in subdivisions 1 through 4 of this subsection:

1. Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

2. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N ~~(2002)~~ (2007) as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

3. Landfills operated in conjunction with centralized waste treatment (CWT) facilities subject to 40 CFR Part 437 ~~(2002)~~ (2007) so long as the CWT facility commingles the landfill wastewater with other nonlandfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

4. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Table 190-1.
Sector L – Numeric Effluent Limitations.

Parameter	Effluent Limitations	
	Maximum Daily	Maximum Monthly Average
Landfills (Industrial Activity Code "LF") that are Subject to the Requirements of 40 CFR Part 445 Subpart B ~~(2002)~~ (2007).		
Biochemical Oxygen Demand (BOD_5)	140 mg/L	37 mg/L
Total Suspended Solids (TSS)	88 mg/L	27 mg/L
Ammonia	10 mg/L	4.9 mg/L
Alpha Terpineol	0.033 mg/L	0.016 mg/L
Benzoic Acid	0.12 mg/L	0.071 mg/L
p-Cresol	0.025 mg/L	0.014 mg/L
Phenol	0.026 mg/L	0.015 mg/L
Zinc (Total)	0.20 mg/L	0.11 mg/L
pH	Within the range of 6.0 - 9.0 s.u.	

F. Benchmark monitoring and reporting requirements. Landfill/land application/open dump sites are required to monitor their storm water discharges for the pollutants of concern listed in Table 190-2. These benchmark monitoring cutoff concentrations apply to storm water discharges associated with industrial activity other than contaminated storm water discharges from landfills subject to the numeric effluent limitations set forth in Table 190-1.

Table 190-2.
Sector L – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut-Off~~ Benchmark Concentration
Landfills, Land Application Sites and Open Dumps (Industrial Activity Code "LF").	

Total Suspended Solids (TSS)	100 mg/L
Landfills, Land Application Sites and Open Dumps (Industrial Activity Code "LF"), except MSWLF Areas Closed in Accordance with the Requirements of the Virginia Solid Waste Management Regulation, 9VAC20-80	
Total Recoverable Iron	~~1~~ 1.0 mg/L

9VAC25-151-200. Sector M - Automobile salvage yards.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities engaged in dismantling or wrecking used motor vehicles for parts recycling/resale and for scrap (SIC Code 5015).

B. Storm water pollution prevention plan requirements.

In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description.

a. Site map. The map ~~must~~ shall include the location of each monitoring point, and an estimation (in acres) of the total area used for industrial activity including, but not limited to, dismantling, storage, and maintenance of used motor vehicle parts. The site map ~~must~~ shall also identify where any of the following may be exposed to precipitation/surface runoff: vehicle storage areas; dismantling areas; parts storage areas (e.g., engine blocks, tires, hub caps, batteries, hoods, mufflers); and liquid storage tanks and drums for fuel and other fluids.

b. Summary of potential pollutant sources. The permittee ~~must~~ shall assess the potential for the following activities to contribute pollutants to storm water discharges: vehicle storage areas; dismantling areas; parts storage areas (e.g., engine blocks, tires, hub caps, batteries, and hoods); fueling stations.

2. Storm water controls.

a. Spill and leak prevention procedures. ~~After clean up from a spill, absorbents must be promptly placed in containers for proper disposal.~~ All vehicles that are intended to be dismantled ~~must~~ shall be properly drained of all fluids prior to being dismantled or crushed, or other equivalent means ~~must~~ shall be taken to prevent leaks or spills of fluids ~~including motor oil, transmission fluid, fuel and antifreeze~~.

b. Inspections. Upon arrival at the site, or as soon thereafter as feasible ~~thereafter~~, vehicles ~~must~~ shall be inspected for leaks. Any equipment containing oily parts, hydraulic fluids, ~~or~~ any other types of fluids, or mercury switches shall be inspected at least quarterly (four times per year) for signs of leaks. ~~Any outdoor storage of~~ All vessels and areas where hazardous materials and general automotive fluids are stored, including, but not limited to, mercury switches, brake fluid, transmission fluid, radiator water, and antifreeze, ~~must~~ shall be inspected at least quarterly for leaks. ~~All outdoor liquid storage containers (e.g., tanks, drums) must be inspected at least quarterly for leaks.~~

c. Employee training. Employee training ~~must~~ shall, at a minimum, address the following areas when applicable to a facility: proper handling (collection, storage, and disposal) of oil, used mineral spirits, anti-freeze, mercury switches, and solvents.

d. Management of runoff. The plan ~~must~~ shall consider management practices, such as berms or drainage ditches on the property line, ~~that may be used~~ to help prevent runon from neighboring properties. Berms ~~must~~ shall be considered for uncovered outdoor storage of oily parts, engine blocks, and aboveground liquid storage. The permittee shall consider the installation of detention ponds, filtering devices, and oil/water separators.

C. Benchmark monitoring and reporting requirements. Automobile salvage yards are required to monitor their storm water discharges for the pollutants of concern listed in Table 200.

Table 200.
Sector M – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut-Off~~ Benchmark Concentration
Automobile Salvage Yards (SIC 5015)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	~~1~~ 1.0 mg/L
Total Recoverable Lead	120 µg/L

9VAC25-151-210. Sector N - Scrap recycling and waste recycling facilities.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities that are engaged in the processing, reclaiming and wholesale distribution of scrap and waste materials such as ferrous and nonferrous metals, paper, plastic, cardboard, glass, animal hides (these types of activities are typically identified as SIC Code 5093), and facilities that are engaged in reclaiming and recycling liquid wastes such as used oil, antifreeze, mineral spirits, and industrial solvents (also identified as SIC Code 5093). Separate permit requirements have been established for recycling facilities that only receive source-separated recyclable materials primarily from nonindustrial and residential sources (also identified as SIC Code 5093) (e.g., common consumer products including paper, newspaper,

glass, cardboard, plastic containers, aluminum and tin cans). This includes recycling facilities commonly referred to as material recovery facilities (MRF). Separate permit requirements have also been established for facilities that are engaged in dismantling ships, marine salvaging, and marine wrecking–ships for scrap (SIC 4499, limited to those listed; for others in SIC 4499 not listed above, see Sector Q (9VAC25-151-240)).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, nonstorm water discharges from turnings containment areas are not covered by this permit ~~(see also 9VAC25-151-210 C 2 c)~~ (see also subdivision C 2 c section). Discharges from containment areas in the absence of a storm event are prohibited unless covered by a separate VPDES permit.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, all facilities are required to comply with the general SWPPP requirement in subdivision 1 of this subsection.

Subdivisions 2 through 5 of this subsection have SWPPP requirements for specific types of recycling facilities. The permittee shall implement and describe in the SWPPP a program to address those items that apply. Included are lists of BMP options that, along with any functional equivalents, ~~should~~ shall be considered for implementation. Selection or deselection of a particular BMP or approach is up to the best professional judgment of the permittee, as long as the objective of the requirement is met.

1. Site description. Site map. The site map shall identify the locations where any of the following activities or sources may be exposed to precipitation/surface runoff: scrap and waste material storage, outdoor scrap and waste processing equipment, and containment areas for turnings exposed to cutting fluids.

2. Scrap recycling and waste recycling facilities nonsource-separated, nonliquid recyclable materials). The following SWPPP special conditions have been established for facilities that receive, process and do wholesale distribution of nonliquid recyclable wastes (e.g., ferrous and nonferrous metals, plastics, glass, cardboard and paper). These facilities may receive both nonrecyclable and recyclable materials. This section is not intended for those facilities that only accept recyclable materials primarily from nonindustrial and residential sources.

a. Inbound recyclable and waste material control program. The plan shall include a recyclable and waste material inspection program to minimize the likelihood of receiving materials that may be significant pollutant sources to storm water discharges. BMP options:

(1) ~~Provision of~~ Provide information/education flyers, brochures and pamphlets to suppliers of scrap and recyclable waste materials on draining and properly disposing of residual fluids prior to delivery to the facility (e.g., from vehicles and equipment engines, radiators, and transmissions, oil-filled transformers, and individual containers or drums), and on removal of mercury switches prior to delivery to the facility;

(2) ~~Procedures~~ Establish procedures to minimize the potential of any residual fluids from coming in contact with precipitation/runoff;

(3) ~~Procedures~~ Establish procedures for accepting scrap lead-acid batteries. ~~(Additional requirements for the handling, storage and disposal or recycling of batteries are contained in the scrap lead-acid battery program provisions in 9VAC25-151-210 C 2 f)~~ Additional requirements for the handling, storage and disposal or recycling of batteries are contained in the scrap lead-acid battery program provisions in subdivision 2 f of this subsection;

(4) ~~Training~~ Provide training targeted for those personnel engaged in the inspection and acceptance of inbound recyclable materials;

(5) ~~Liquid~~ Establish procedures to ensure that liquid wastes, including used oil, ~~shall be~~ are stored in materially compatible and nonleaking containers and disposed or recycled in accordance with all requirements under the Resource Recovery and Conservation Act (RCRA), and other state or local requirements.

b. Scrap and waste material stockpiles/storage (outdoor). The plan ~~must~~ shall describe measures and controls to minimize contact of storm water runoff with stockpiled materials, processed materials and nonrecyclable wastes. BMP options:

(1) Permanent or semipermanent covers;

(2) The use of sediment traps, vegetated swales and strips, catch basin filters and sand filters to facilitate settling or filtering of pollutants;

(3) Diversion of runoff away from storage areas via dikes, berms, containment trenches, culverts and surface grading;

(4) Silt fencing;

(5) Oil/water separators, sumps and dry adsorbents for areas where potential sources of residual fluids are stockpiled (e.g., automotive engine storage areas).

c. Stockpiling of turnings exposed to cutting fluids ~~(outdoor)~~ (outdoor storage). The plan shall implement measures necessary to minimize contact of surface runoff with residual cutting fluids. BMP options (use singularly or in combination):

(1) Storage of all turnings exposed to cutting fluids under some form of permanent or semipermanent cover. Storm water discharges from these areas are permitted provided the runoff is first treated by an oil/water separator or its equivalent. Procedures to collect, handle, and dispose or recycle residual fluids that may be present shall be identified in the plan;

(2) Establish dedicated containment areas for all turnings that have been exposed to cutting fluids. Storm water runoff from these areas can be discharged provided:

(a) The containment areas are constructed of either concrete, asphalt or other equivalent type of impermeable material;

(b) There is a barrier around the perimeter of the containment areas to prevent contact with storm water runon (e.g., berms, curbing, elevated pads, etc.);

(c) There is a drainage collection system for runoff generated from containment areas;

(d) There is a schedule to maintain the oil/water separator (or its equivalent); and

(e) Procedures are identified for the proper disposal or recycling of collected residual fluids.

d. Scrap and waste material stockpiles/storage (covered or indoor storage). The plan shall address measures and controls to minimize contact of residual liquids and particulate matter from materials stored indoors or under cover from coming in contact with surface runoff. BMP options:

(1) Good housekeeping measures, including the use of dry absorbent or wet vacuum clean up methods, to contain or dispose/recycle residual liquids originating from recyclable containers, or mercury spill kits from storage of mercury switches;

(2) Prohibiting the practice of allowing washwater from tipping floors or other processing areas from discharging to the storm sewer system;

(3) Disconnecting or sealing off all floor drains connected to the storm sewer system.

e. Scrap and recyclable waste processing areas. The plan shall include measures and controls to minimize surface runoff from coming in contact with scrap processing equipment. In the case of processing equipment that generate visible amounts of particulate residue (e.g., shredding facilities), the plan shall describe measures to minimize the contact of residual fluids and accumulated particulate matter with runoff (i.e., through good housekeeping, preventive maintenance, etc.). BMP options:

(1) A schedule of regular inspections of equipment for leaks, spills, malfunctioning, worn or corroded parts or equipment;

(2) A preventive maintenance program for processing equipment;

(3) Removal of mercury switches from the hood and trunk lighting units, and removal of anti-lock brake system units containing mercury switches;

~~(3)~~ (4) Use of dry-absorbents or other cleanup practices to collect and to dispose/recycle spilled/leaking fluids, or use of mercury spill kits for spills from storage of mercury switches;

~~(4)~~ (5) Installation of low-level alarms or other equivalent protection devices on unattended hydraulic reservoirs over 150 gallons in capacity. Alternatively, provide secondary containment with sufficient volume to contain the entire volume of the reservoir.

~~(5)~~ (6) Containment or diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, and grading to minimize contact of storm water runoff with outdoor processing equipment or stored materials;

~~(6)~~ (7) Oil/water separators or sumps;

~~(7)~~ (8) Permanent or semipermanent covers in processing areas where there are residual fluids and grease;

~~(8)~~ (9) Retention and detention basins or ponds, sediment traps, vegetated swales or strips, to facilitate pollutant settling/ filtration;

~~(9)~~ (10) Catch basin filters or sand filters.

f. Scrap lead-acid battery program. The plan shall address measures and controls for the proper handling, storage and disposal of scrap lead-acid batteries. BMP options:

(1) Segregate scrap lead-acid batteries from other scrap materials;

(2) A description of procedures and/or measures for the proper handling, storage and disposal of cracked or broken batteries;

(3) A description of measures to collect and dispose of leaking lead-acid battery fluid;

(4) A description of measures to minimize and, whenever possible, eliminate exposure of scrap lead-acid batteries to precipitation or runoff;

(5) A description of employee training for the management of scrap batteries.

g. Spill prevention and response procedures. The SWPPP shall include measures to minimize storm water contamination at loading/unloading areas, and from equipment or container failures. BMP options:

(1) Description of spill prevention and response measures to address areas that are potential sources of fluid leaks or spills;

(2) Immediate containment and clean up of spills/leaks. If malfunctioning equipment is responsible for the spill/leak, repairs ~~should~~ shall also be conducted as soon as possible;

(3) Cleanup procedures ~~should~~ shall be identified in the plan, including the use of dry absorbents. Where dry absorbent cleanup methods are used, an adequate supply of dry absorbent material ~~should~~ shall be maintained on-site. Used absorbent material ~~should~~ shall be disposed of properly;

(4) Drums containing liquids, especially oil and lubricants, ~~should~~ shall be stored: indoors; in a bermed area; in overpack containers or spill pallets; or in similar containment devices;

(5) Overfill prevention devices ~~should~~ shall be installed on all fuel pumps or tanks;

(6) Drip pans or equivalent measures ~~should~~ shall be placed under any leaking piece of stationary equipment until the leak is repaired. The drip pans ~~should~~ shall be inspected for leaks and potential overflow and all liquids properly disposed of in accordance with RCRA requirements;

(7) An alarm and/or pump shut off system ~~should~~ shall be installed on outdoor equipment with hydraulic reservoirs exceeding 150 gallons in order to prevent draining the tank contents in the event of a line break. Alternatively, the equipment may have a secondary containment system capable of containing the contents of the hydraulic reservoir plus adequate freeboard for precipitation. A mercury spill kit shall be used for any release of mercury from switches, anti-lock brake systems, and switch storage areas.

h. ~~Quarterly inspection~~ Inspection program. All designated areas of the facility and equipment identified in the plan shall be inspected at least ~~quarterly~~ monthly.

i. Supplier notification program. The plan shall include a program to notify major suppliers which scrap materials will not be accepted at the facility or are only accepted under certain conditions.

3. Waste recycling facilities ~~(liquid recyclable wastes)~~ (liquid recyclable materials).

a. Waste material storage (indoor). The plan shall include measures and controls to minimize/eliminate contact between residual liquids from waste materials stored indoors and surface runoff. The plan may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR Part 112 ~~(2002)~~ (2007). BMP options:

(1) Procedures for material handling (including labeling and marking);

(2) A sufficient supply of dry-absorbent materials or a wet vacuum system to collect spilled or leaked materials (note: spilled or leaking mercury should never be vacuumed);

(3) An appropriate containment structure, such as trenches, curbing, gutters or other equivalent measures;

(4) A drainage system, including appurtenances (e.g., pumps or ejectors, or manually operated valves), to handle discharges from diked or bermed areas. Drainage ~~should~~ shall be discharged to an appropriate treatment facility, sanitary sewer system, or otherwise disposed of properly. Discharges from these areas may require coverage under a separate VPDES permit or industrial user permit under the pretreatment program.

b. Waste material storage (outdoor). The plan shall describe measures and controls to minimize contact between stored residual liquids and precipitation or runoff. The plan may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR Part 112 ~~(2002)~~ (2007). Discharges of precipitation from containment areas containing used oil shall also be in accordance with applicable sections of 40 CFR Part 112 ~~(2002)~~ (2007). BMP options:

(1) Appropriate containment structures (e.g., dikes, berms, curbing, pits) to store the volume of the largest single tank, with sufficient extra capacity for precipitation;

(2) Drainage control and other diversionary structures;

(3) For storage tanks, provide corrosion protection and/or leak detection systems;

(4) Dry-absorbent materials or a wet vacuum system to collect spills.

c. Truck and rail car waste transfer areas. The plan shall describe measures and controls to minimize pollutants in discharges from truck and rail car loading/unloading areas. The plan shall also address measures to clean up minor spills/leaks resulting from the transfer of liquid wastes. BMP options:

(1) Containment and diversionary structures to minimize contact with precipitation or runoff;

(2) Use of dry cleanup methods, wet vacuuming, roof coverings, or runoff controls.

d. ~~Quarterly inspections~~ Inspections. ~~The quarterly inspections~~ Inspections shall be made monthly and shall also include all areas where waste is generated, received,

stored, treated or disposed that are exposed to either precipitation or storm water runoff.

4. Recycling facilities (source separated materials). The following SWPPP special conditions have been established for facilities that receive only source-separated recyclable materials primarily from nonindustrial and residential sources.

a. Inbound recyclable material control. The plan shall include an inbound materials inspection program to minimize the likelihood of receiving nonrecyclable materials (e.g., hazardous materials) that may be a significant source of pollutants in surface runoff. BMP options:

(1) ~~Information~~ Provide information and education measures to inform suppliers of recyclable materials on the types of materials that are acceptable and those that are not acceptable;

(2) A description of training measures for drivers responsible for pickup of recyclable materials;

(3) Clearly ~~marking~~ mark public drop-off containers regarding which materials can be accepted;

(4) Rejecting nonrecyclable wastes or household hazardous wastes at the source;

(5) ~~Procedures~~ Establish procedures for the handling and disposal of nonrecyclable materials.

b. Outdoor storage. The plan shall include procedures to minimize the exposure of recyclable materials to surface runoff and precipitation. The plan shall include good housekeeping measures to prevent the accumulation of particulate matter and fluids, particularly in high traffic areas. BMP options:

(1) Provide totally-enclosed drop-off containers for the public;

(2) Install a sump/pump with each containment pit, and discharge collected fluids to a sanitary sewer system;

(3) Provide dikes and curbs for secondary containment (e.g., around bales of recyclable waste paper);

(4) Divert surface runoff away from outside material storage areas;

(5) Provide covers over containment bins, dumpsters, roll-off boxes;

(6) Store the equivalent one day's volume of recyclable materials indoors.

c. Indoor storage and material processing. The plan shall include measures to minimize the release of pollutants from indoor storage and processing areas. BMP options:

(1) Schedule routine good housekeeping measures for all storage and processing areas;

(2) Prohibit a practice of allowing tipping floor washwaters from draining to any portion of the storm sewer system; and

(3) Provide employee training on pollution prevention practices.

d. Vehicle and equipment maintenance. The plan shall also provide for BMPs in those areas where vehicle and equipment maintenance is occurring outdoors. BMP options:

(1) Prohibit vehicle and equipment washwater from discharging to the storm sewer system;

(2) Minimize or eliminate outdoor maintenance areas, wherever possible;

(3) Establish spill prevention and clean-up procedures in fueling areas;

(4) Avoid topping off fuel tanks;

(5) Divert runoff from fueling areas;

(6) Store lubricants and hydraulic fluids indoors;

(7) Provide employee training on proper, handling, storage of hydraulic fluids and lubricants.

5. Facilities engaged in dismantling ships, marine salvaging, and marine wrecking-ships for scrap. The following SWPPP special conditions have been established for facilities that are engaged in dismantling ships, marine salvaging, and marine wrecking-ships for scrap.

Vessel Breaking/Scrapping Activities. Scrapping of vessels shall be accomplished ashore beyond the range of mean high tide, whenever practicable. If this activity must be conducted while a vessel is afloat or grounded in state waters, then the permittee ~~must~~ shall employ BMPs to reduce the amount of pollutants released. The following BMPs shall be implemented during those periods when vessels (ships, barges, yachts, etc.) are brought to the facility's site for recycling, scrapping and storage prior to scrapping.

a. Fixed or floating platforms sufficiently sized and constructed to catch and prevent scrap materials and pollutants from entering state waters (or equivalent measures approved by the department) shall be used as work surfaces when working on or near the water surface. These platforms shall be cleaned as required to prevent pollutants from entering state waters and at the end of each work shift. All scrap metals and pollutants shall be collected in a manner to prevent releases (containerization is recommended).

b. There shall be no discharge of oil or oily wastewater at the facility. Drip pans and other protective devices shall be required for all oil and oily waste transfer operations to catch incidental spillage and drips from hose nozzles, hose racks, drums or barrels. Drip pans and other protective devices shall be inspected and maintained to prevent releases. Oil and oily waste ~~must~~ shall be disposed at a permitted facility and adequate documentation of off-site disposition shall be retained for review by the board upon request.

c. During the storage/breaking/scrapping period, oil containment boom(s) shall be deployed either around the vessel being scrapped, or across the mouth of the facility's wetslip, to contain pollutants in the event of a spill. Booms ~~must~~ shall be inspected, maintained, and repaired as needed. Oil, grease and fuel spills shall be prevented from reaching state waters. Cleanup shall be carried out promptly after an oil, grease, and/or fuel spill is detected.

d. Paint and solvent spills shall be immediately cleaned up to prevent pollutants from reaching storm drains, deck drains, and state waters.

e. Contaminated bilge and ballast water shall not be discharged to state waters. If it becomes necessary to dispose of contaminated bilge and ballast waters during a vessel breaking activity, the wastewater ~~must~~ shall be disposed at a permitted facility and adequate documentation of off-site disposition shall be retained for review by the board upon request.

D. Benchmark monitoring and reporting requirements. Scrap recycling and waste recycling facilities (nonsource-separated facilities only), and facilities engaged in dismantling ships, marine salvaging, and marine wrecking-ships for scrap are required to monitor their storm water discharges for the pollutants of concern listed in Table 210.

Table 210.
Sector N – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut Off~~ Benchmark Concentration
Scrap Recycling and Waste Recycling Facilities (nonsource-separated facilities only) (SIC 5093)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Aluminum	750 µg/L
Total Recoverable Cadmium	~~3.9~~ 2.1 µg/L
~~Hexavalent~~ Total Recoverable Chromium	16 µg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	~~1~~ 1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Zinc	120 µg/L
Facilities Engaged in Dismantling Ships, Marine Salvaging, and Marine Wrecking - Ships For Scrap (SIC 4499, limited to list)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Cadmium	2.1 µg/L
Total Recoverable Chromium	16 µg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-220. Sector O - Steam electric generating facilities.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from steam electric power generating facilities using coal, natural gas, oil, nuclear energy, etc. to produce a steam source, including coal handling areas (Industrial Activity Code "SE").

Storm water discharges from coal pile runoff subject to numeric effluent limitations are eligible for coverage under this permit, but are subject to the limitations established by Part I A 1 c (2).

Storm water discharges from ancillary facilities (e.g., fleet centers, gas turbine stations, and substations) that are not contiguous to a steam electric power generating facility are not covered by this permit. Heat capture/heat recovery combined cycle generation facilities are also not covered by this permit; however, dual fuel co-generation facilities that generate electric power are included.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, nonstorm water discharges subject to effluent limitation guidelines are also not covered by this permit.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.

1. Site description. Site map. The site map shall identify the locations of any of the following activities or sources that may be exposed to precipitation/surface runoff: storage tanks, scrap yards, general refuse areas; short and long term storage of general materials (including, but not limited to: supplies, construction materials, ~~plant~~ paint equipment, oils, fuels, used and unused solvents, cleaning materials, paint, water treatment chemicals, fertilizer, and pesticides); landfills; construction sites; and stock pile areas (such as coal or limestone piles).

2. Storm water controls.

a. Good housekeeping measures.

(1) Fugitive dust emissions. The permittee shall describe and implement measures that prevent or minimize fugitive dust emissions from coal handling areas. The permittee shall consider establishing procedures to minimize off-site tracking of coal dust such as installing specially designed tires, or washing vehicles in a designated area before they leave the site, and controlling the wash water.

(2) Delivery vehicles. The plan ~~must~~ shall describe measures that prevent or minimize contamination of storm water runoff from delivery vehicles arriving on the plant site. At a minimum the permittee shall consider the following:

(a) Develop procedures for the inspection of delivery vehicles arriving on the plant site, and ensure overall integrity of the body or container; and

(b) Develop procedures to deal with leakage/spillage from vehicles or containers.

(3) Fuel oil unloading areas. The plan ~~must~~ shall describe measures that prevent or minimize contamination of precipitation/surface runoff from fuel oil unloading areas. At a minimum the permittee ~~must~~ shall consider using the following measures, or an equivalent:

(a) Use of containment curbs in unloading areas;

(b) During deliveries, having station personnel familiar with spill prevention and response procedures present to ensure that any leaks/spills are immediately contained and cleaned up; and

(c) Use of spill and overflow protection (e.g., drip pans, drip diapers, and/or other containment devices placed beneath fuel oil connectors to contain potential spillage during deliveries or from leaks at the connectors).

(4) Chemical loading/unloading areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize the contamination of precipitation/surface runoff from chemical loading/unloading areas. At a minimum the permittee ~~must~~ shall consider using the following measures (or their equivalents):

(a) Use of containment curbs at chemical loading/unloading areas to contain spills;

(b) During deliveries, having station personnel familiar with spill prevention and response procedures present to ensure that any leaks/spills are immediately contained and cleaned up; and

(c) Covering chemical loading/unloading areas, and storing chemicals indoors.

(5) Miscellaneous loading/unloading areas. The permittee shall describe and implement measures that prevent or minimize the contamination of storm water runoff from loading and unloading areas. The permittee shall consider the following, at a minimum (or their equivalents):

(a) covering the loading area;

(b) grading, berming, or curbing around the loading area to divert runon; or

(c) locating the loading/unloading equipment and vehicles so that leaks are contained in existing containment and flow diversion systems.

(6) Liquid storage tanks. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from aboveground liquid storage tanks. At a minimum the permittee ~~must~~ shall consider employing the following measures (or their equivalents):

(a) Use of protective guards around tanks;

(b) Use of containment curbs;

(c) Use of spill and overflow protection; and

(d) Use of dry cleanup methods.

(7) Large bulk fuel storage tanks. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from large bulk fuel storage tanks. At a minimum the permittee ~~must~~ shall consider employing containment berms (or its equivalent). The permittee shall also comply with applicable state and federal laws, including Spill Prevention Control and Countermeasures (SPCC).

(8) Spill reduction measures. The permittee shall describe and implement measures to reduce the potential for an oil/chemical spill, or reference the appropriate section of their SPCC plan. At a minimum the structural integrity of all aboveground tanks, pipelines, pumps and other related equipment shall be visually inspected on a weekly basis. All repairs deemed necessary based on the findings of the

inspections shall be completed immediately to reduce the incidence of spills and leaks occurring from such faulty equipment.

(9) Oil bearing equipment in switchyards. The permittee shall describe and implement measures to prevent or minimize contamination of surface runoff from oil bearing equipment in switchyard areas. The permittee shall consider the use of level grades and gravel surfaces to retard flows and limit the spread of spills, and the collection of storm water runoff in perimeter ditches.

(10) Residue hauling vehicles. All residue hauling vehicles shall be inspected for proper covering over the load, adequate gate sealing and overall integrity of the container body. Vehicles without load coverings or adequate gate sealing, or with leaking containers or beds ~~must~~ shall be repaired as soon as practicable.

(11) Ash loading areas. The permittee shall describe and implement procedures to reduce or control the tracking of ash/residue from ash loading areas where practicable, clear the ash building floor and immediately adjacent roadways of spillage, debris and excess water before departure of each loaded vehicle.

(12) Areas adjacent to disposal ponds or landfills. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from areas adjacent to disposal ponds or landfills. The permittee ~~must~~ shall develop procedures to:

(a) Reduce ash residue which may be tracked on to access roads traveled by residue trucks or residue handling vehicles; and

(b) Reduce ash residue on exit roads leading into and out of residue handling areas.

(13) Landfills, scrapyards, surface impoundments, open dumps, general refuse sites. The plan ~~must~~ shall address and include appropriate BMPs for landfills, scrapyards, surface impoundments, open dumps and general refuse sites.

(14) Vehicle maintenance activities. For vehicle maintenance activities performed on the plant site, the permittee shall use the applicable BMPs outlined in Sector P (9VAC25-151-230).

(15) Material storage areas. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from material storage areas (including areas used for temporary storage of miscellaneous products, and construction materials stored in ~~lay down~~ lay-down areas). The permittee shall consider the use of the following measures (or their equivalents): flat yard grades; runoff collection in graded swales or ditches; erosion protection measures at steep outfall sites (e.g., concrete chutes, riprap, stilling basins); covering ~~lay down~~ lay-down areas; storing materials indoors; and covering materials temporarily with polyethylene, polyurethane, polypropylene, or hypalon. Storm water runon may be minimized by constructing an enclosure or building a berm around the area.

b. Comprehensive site compliance evaluation. As part of the evaluation, qualified facility personnel shall inspect the following areas on a monthly basis: coal handling areas, loading/unloading areas, switchyards, fueling areas, bulk storage areas, ash handling areas, areas adjacent to disposal ponds and landfills, maintenance areas, liquid storage tanks, and long term and short term material storage areas.

D. Numeric effluent limitations. Permittees with point sources of coal pile runoff associated with steam electric power generation ~~must~~ shall monitor these storm water discharges for the presence of TSS and for pH at least annually (one time per year) in accordance with PART I A 1 c (2).

E. Benchmark monitoring and reporting requirements. Steam electric power generating facilities are required to monitor their storm water discharges for the ~~pollutant~~ pollutants of concern listed in Table 220.

Table 220.
Sector O – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut-Off~~ Benchmark Concentration
Steam Electric Generating Facilities (Industrial Activity Code "SE")	
Total Recoverable Iron	~~1~~ 1.0 mg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-230. Sector P - Land transportation and warehousing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from ground transportation facilities and rail transportation facilities (generally identified by SIC Codes 40, 41, 42, 43, and 5171), that have vehicle and equipment maintenance shops (vehicle and equipment rehabilitation, mechanical repairs, painting, fueling and lubrication) and/or equipment cleaning operations. Also covered under this section are facilities found under SIC Codes 4221 through 4225 (public warehousing and storage) that do not have vehicle and equipment maintenance shops and/or equipment cleaning operations.

B. Special conditions. Prohibition of nonstorm water discharges. This permit does not authorize the discharge of vehicle/equipment/surface washwater, including tank-

cleaning operations. Such discharges must be authorized under a separate VPDES permit, discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements, or recycled on-site.

~~B.~~ C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description. Site Map. The site map shall identify the locations of any of the following activities ~~or sources~~ and indicate whether the activities may be exposed to precipitation/surface runoff: fueling stations; vehicle/equipment maintenance or cleaning areas; storage areas for vehicle/equipment with actual or potential fluid leaks; loading/unloading areas; areas where treatment, storage or disposal of wastes occur; liquid storage tanks; processing areas; and storage areas~~; and all monitoring areas~~.

2. Summary of potential pollutant sources. The plan shall describe and assess the potential for the following to contribute pollutants to storm water discharges: on-site waste storage or disposal; dirt/gravel parking areas for vehicles awaiting maintenance; plumbing connections between shop floor drains and the stormwater conveyance system; and fueling areas.

3. Storm water controls.

a. Good housekeeping.

(1) Vehicle and equipment storage areas. The storage of vehicles and equipment awaiting maintenance with actual or potential fluid leaks ~~must~~ shall be confined to designated areas (delineated on the site map). The permittee shall consider the following measures (or their equivalents): the use of drip pans under vehicles and equipment; indoor storage of vehicles and equipment; installation of berms or dikes; use of absorbents; roofing or covering storage areas; and cleaning pavement surface to remove oil and grease.

(2) Fueling areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from fueling areas. The permittee shall consider the following measures (or their equivalents): covering the fueling area; using spill/overflow protection and cleanup equipment; minimizing storm water runon/runoff to the fueling area; using dry cleanup methods; and treating and/or recycling collected storm water runoff.

(3) Material storage areas. Storage vessels of all materials (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) ~~must~~ shall be maintained in good condition, so as to prevent contamination of storm water, and plainly labeled (e.g., "used oil," "spent solvents," etc.). The permittee shall consider the following measures (or their equivalents): indoor storage of the materials; installation of berms/dikes around the areas, minimizing runoff of storm water to the areas; using dry cleanup methods; and treating and/or recycling the collected storm water runoff.

(4) Vehicle and equipment cleaning areas. The permittee shall describe and implement measures that prevent or minimize contamination of storm water runoff from all areas used for vehicle/equipment cleaning. The permittee shall consider the following measures (or their equivalents): performing all cleaning operations indoors; covering the cleaning operation; ensuring that all washwaters drain to a proper collection system (i.e., not the storm water drainage system unless VPDES permitted); and treating and/or recycling the collected storm water runoff. ~~Note: the discharge of vehicle/equipment wash waters, including tank cleaning operations, are not authorized by this permit and must be covered under a separate VPDES permit or discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.~~

(5) Vehicle and equipment maintenance areas. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from all areas used for vehicle/equipment maintenance. The permittee shall consider the following measures (or their equivalents): performing maintenance activities indoors; using drip pans; keeping an organized inventory of materials used in the shop; draining all parts of fluids prior to disposal; prohibiting wet clean up practices where the practices would result in the discharge of pollutants to storm water drainage systems; using dry cleanup methods; treating and/or recycling collected storm water runoff; and minimizing runon/runoff of storm water to maintenance areas.

(6) Locomotive sanding (loading sand for traction) areas. The plan ~~must~~ shall describe measures that prevent or minimize contamination of the storm water runoff from areas used for locomotive sanding. The permittee shall consider the following measures (or their equivalents): covering sanding areas; minimizing storm water runon/runoff; or appropriate sediment removal practices to minimize the off-site transport of sanding material by storm water.

b. Routine facility inspections. The following areas/activities shall be included in all inspections: storage area for vehicles/equipment awaiting maintenance; fueling areas; indoor and outdoor vehicle/equipment maintenance areas; material storage areas; vehicle/equipment cleaning areas; and loading/unloading areas.

c. Employee training. Employee training shall take place, at a minimum, annually (once per calendar year).

Employee training ~~must~~ shall address the following as applicable: used oil and spent solvent management; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management.

d. ~~Nonstorm water discharges~~ Vehicle and equipment washwater requirements. For facilities that discharge vehicle and equipment washwaters to the sanitary sewer system, the operator of the sanitary system and associated treatment plant must be notified. In such cases, a copy of the notification letter ~~must~~ shall be attached to the plan. If an industrial user permit is issued under a pretreatment program, a reference to that permit ~~must~~ shall be in the plan. In all cases, any permit conditions or pretreatment requirements ~~must~~ shall be considered in the plan. If the washwaters are handled in another manner (e.g., hauled off-site), the disposal method ~~must~~ shall be described and all pertinent documentation (e.g., frequency, volume, destination, etc.) ~~must~~ shall be attached to the plan.

D. Benchmark monitoring and reporting requirements. Land transportation and warehousing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 230.

Table 230.
Sector P - Benchmark Monitoring Requirements.

Pollutants of Concern	Benchmark Concentration
Land Transportation and Warehousing Facilities (SIC 4011, 4013, 4111-4173, 4212-4231, 4311, and 5171)	
Total Petroleum Hydrocarbons (TPH) *	15.0 mg/L
Total Suspended Solids (TSS)	100 mg/L

* - Total Petroleum Hydrocarbons shall be analyzed using the Wisconsin Department of Natural Resources Modified Diesel Range Organics Method as specified in Wisconsin publication SW-141 (1995), or by EPA SW-846 Method 8015C for diesel range organics, or by EPA SW-846 Method 8270D. If Method 8270D is used, the lab must report the combination of diesel range organics and polynuclear aromatic hydrocarbons.

9VAC25-151-240. Sector Q - Water transportation.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from water transportation facilities (generally identified by SIC Major Group 44), that have vehicle (vessel) maintenance shops and/or equipment cleaning operations. The water transportation industry includes facilities engaged in foreign or domestic transport of freight or passengers in deep sea or inland waters; marine cargo handling operations; ferry operations; towing and tugboat services; and marinas.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify the locations where any of the following activities may be exposed to precipitation/surface runoff: fueling; engine maintenance/repair; vessel maintenance/repair, pressure washing; painting; sanding; blasting; welding; metal fabrication; loading/unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).

b. Summary of potential pollutant sources. The plan shall describe the following additional sources and activities that have potential pollutants associated with them: outdoor manufacturing or processing activities (i.e., welding, metal fabricating); and significant dust or particulate generating processes (e.g., abrasive blasting, sanding, painting).

2. Storm water controls.

a. Good housekeeping.

(1) Pressure washing area. If pressure washing is used to remove marine growth from vessels, the discharge water must be permitted by a separate VPDES permit. The SWPPP ~~must~~ shall describe: the measures to collect or contain the discharge from the pressure washing area; the method for the removal of the visible solids; the methods of disposal of the collected solids; and where the discharge will be released.

(2) Blasting and painting areas. The permittee ~~must~~ shall describe and implement measures to prevent spent abrasives, paint chips, and overspray from discharging into the receiving water or the storm sewer system. The permittee may consider containing all blasting/painting activities, or the use of other measures to prevent or minimize the discharge of contaminants (e.g., hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). Storm water conveyances shall be regularly cleaned to remove deposits of abrasive blasting debris and paint chips. The plan ~~should~~ shall include any standard operating practices with regard to blasting and painting activities, such as the prohibition of uncontained blasting/painting over open water, or the

prohibition of blasting/painting during windy conditions which can render containment ineffective.

(3) Material storage areas. All containerized materials ~~(fuels, paints, solvents, waste oil, antifreeze, batteries)~~ (e.g., fuels, paints, solvents, waste oil, antifreeze, batteries) ~~must~~ shall be plainly labeled and stored in a protected, secure location away from drains. The permittee ~~must~~ shall describe and implement measures to prevent or minimize the contamination of precipitation/surface runoff from the storage areas. The plan ~~must~~ shall specify which materials are stored indoors and consider containment or enclosure for materials that are stored outdoors. The permittee ~~must~~ shall consider implementing an inventory control plan to limit the presence of potentially hazardous materials on-site. Where abrasive blasting is performed, the plan ~~must~~ shall specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility.

(4) Engine maintenance and repair areas. The permittee ~~must~~ shall describe and implement measures to prevent or minimize contamination of precipitation/surface runoff from all areas used for engine maintenance and repair. The permittee shall consider the following measures (or their equivalent): performing all maintenance activities indoors; maintaining an organized inventory of materials used in the shop; draining all parts of fluids prior to disposal; prohibiting the practice of hosing down the shop floor using dry cleanup methods; and treating and/or recycling storm water runoff collected from the maintenance area.

(5) Material handling areas. The permittee ~~must~~ shall describe and implement measures to prevent or minimize contamination of precipitation/surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). The permittee shall consider the following measures (or their equivalents): covering fueling areas; using spill/overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimizing runon of storm water to material handling areas.

(6) Drydock activities. The plan ~~must~~ shall address the routine maintenance and cleaning of the drydock to minimize the potential for pollutants in the storm water runoff. The plan ~~must~~ shall describe the procedures for cleaning the accessible areas of the drydock prior to flooding and final cleanup after the vessel is removed and the dock is raised. Cleanup procedures for oil, grease, or fuel spills occurring on the drydock ~~must~~ shall also be included within the plan. The permittee shall consider the following measures (or their equivalents): sweeping rather than hosing off debris/spent blasting material from the accessible areas of the drydock prior to flooding; and having absorbent materials and oil containment booms readily available to contain/cleanup any spills.

(7) General yard area. The plan ~~must~~ shall include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc., ~~must~~ shall be routinely removed from the general yard area.

b. Preventative Maintenance. As part of the facility's preventive maintenance program, storm water management devices shall be inspected and maintained in a timely manner (e.g., oil/water separators and sediment traps cleaned to ensure that spent abrasives, paint chips and solids are intercepted and retained prior to entering the storm drainage system). Facility equipment and systems shall also be inspected and tested to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

c. Routine facility inspections. The following areas shall be included in all monthly inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area.

d. Employee training. Training shall address, at a minimum, the following activities (as applicable): used oil management; spent solvent management; disposal of spent abrasives; disposal of vessel wastewaters; spill prevention and control; fueling procedures; general good housekeeping practices; painting and blasting procedures; and used battery management.

e. Comprehensive site compliance evaluation. The permittee shall conduct regularly scheduled evaluations at least once a year and address those areas contributing to a storm water discharge associated with industrial activity (e.g., pressure washing area, blasting/sanding areas, painting areas, material storage areas, engine maintenance/repair areas, material handling areas, and drydock area). These sources shall be inspected for evidence of, or the potential for, pollutants entering the drainage system.

D. Benchmark monitoring and reporting requirements. Water transportation facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 240.

Table 240. Sector Q – Benchmark Monitoring Requirements.	
Pollutants of Concern	~~Monitoring Cut-Off~~ Benchmark Concentration
Water Transportation Facilities (SIC 4412-4499)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	~~1~~ 1.0 mg/L
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-250. Sector R - Ship and boat building or repair yards.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities engaged in ship building and repairing and boat building and repairing (SIC Code 373). (According to the U.S. Coast Guard, a vessel 65 feet or greater in length is referred to as a ship and a vessel smaller than 65 feet is a boat.)

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: bilge and ballast water, pressure wash water, sanitary wastes, and cooling water originating from vessels.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify the locations where any of the following activities may be exposed to precipitation/surface runoff: fueling; engine maintenance/repair; vessel maintenance/repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading/unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).

b. Potential pollutant sources. The plan shall include a description of the following additional sources and activities that have potential pollutants associated with them (if applicable): outdoor manufacturing/processing activities (e.g., welding, metal fabricating); and significant dust/particulate generating processes (e.g., abrasive blasting, sanding, painting).

2. Storm water controls.

a. Good housekeeping measures.

(1) Pressure washing area. If pressure washing is used to remove marine growth from vessels, the discharge water must be permitted as a process wastewater by a separate VPDES permit.

(2) Blasting and painting areas. The permittee ~~must~~ shall describe and implement measures to prevent spent abrasives, paint chips and overspray from discharging into the receiving waterbody or the storm sewer system. To prevent the discharge of contaminants, the permittee shall consider containing all blasting/painting activities or using other methods, such as hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris. ~~Where necessary, the~~ The plan ~~should~~ shall include a schedule for regularly cleaning storm systems to remove deposits of abrasive blasting debris and paint chips. The plan ~~should~~ shall include any standard operating practices with regard to blasting and painting activities, such as the prohibition of uncontained blasting/painting over open water or the prohibition of blasting/painting during windy conditions that can render containment ineffective.

(3) Material storage areas. All containerized materials (fuels, paints, solvents, waste oil, antifreeze, batteries) ~~must~~ shall be plainly labeled and stored in a protected, secure location away from drains. The permittee ~~must~~ shall describe and implement measures to prevent or minimize contamination of precipitation/surface runoff from the storage areas. The plan ~~must~~ shall specify which materials are stored indoors and consider containment or enclosure for materials that are stored outdoors. The permittee ~~must~~ shall consider implementing an inventory control plan to limit the presence of potentially hazardous materials on-site. Where abrasive blasting is performed, the plan ~~must~~ shall specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility.

(4) Engine maintenance and repair areas. The permittee ~~must~~ shall describe and implement measures to prevent or minimize contamination of precipitation/surface runoff from all areas used for engine maintenance and repair. The permittee shall consider the following measures (or their equivalent): performing all maintenance activities indoors; maintaining an organized inventory of materials used in the shop; draining all parts of fluids prior to disposal; prohibiting the practice of hosing down the shop floor; using dry cleanup methods; and treating and/or recycling storm water runoff collected from the maintenance area.

(5) Material handling areas. The permittee ~~must~~ shall describe and implement measures to prevent or minimize

contamination of precipitation/surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). The permittee shall consider the following methods (or their equivalents): covering fueling areas; using spill/overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimizing runon of storm water to material handling areas.

(6) Drydock activities. The plan ~~must~~ shall address the routine maintenance and cleaning of the drydock to minimize the potential for pollutants in the storm water runoff. The plan ~~must~~ shall describe the procedures for cleaning the accessible areas of the drydock prior to flooding and final cleanup after the vessel is removed and the dock is raised. Cleanup procedures for oil, grease, or fuel spills occurring on the drydock ~~must~~ shall also be included within the plan. The permittee shall consider the following measures (or their equivalents): sweeping rather than hosing off debris/spent blasting material from the accessible areas of the drydock prior to flooding and having absorbent materials and oil containment booms readily available to contain/cleanup any spills.

(7) General yard area. The plan ~~must~~ shall include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc., ~~must~~ shall be routinely removed from the general yard area.

b. Preventative maintenance. As part of the facility's preventive maintenance program, storm water management devices shall be inspected and maintained in a timely manner (e.g., oil/water separators and sediment traps cleaned to ensure that spent abrasives, paint chips and solids are intercepted and retained prior to entering the storm drainage system). Facility equipment and systems shall also be inspected and tested to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

c. Routine facility inspections. The following areas shall be included in all monthly inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance/repair areas; material handling areas; drydock area; and general yard area.

d. Employee training. Training shall address, at a minimum, the following activities (as applicable): used oil management; spent solvent management; proper disposal of spent abrasives; proper disposal of vessel wastewaters, spill prevention and control; fueling procedures; general good housekeeping practices; painting and blasting procedures; and used battery management.

e. Comprehensive site compliance evaluation. The permittee shall conduct regularly scheduled evaluations at least once a year and address those areas contributing to a storm water discharge associated with industrial activity (e.g., pressure washing area, blasting/sanding areas, painting areas, material storage areas, engine maintenance/repair areas, material handling areas, and drydock area). These ~~sources~~ areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system.

D. Benchmark monitoring and reporting requirements. Ship and boat building or repairing yards are required to monitor their storm water discharges for the pollutants of concern listed in Table 250.

Table 250.
Sector R - Benchmark Monitoring Requirements.

Pollutants of Concern	Benchmark Concentration
Ship and Boat Building or Repairing Yards (SIC 3731, 3732)	
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-260. Sector S - Air transportation.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from air transportation facilities including airports, airport terminal services, air transportation (scheduled and nonscheduled), flying fields, air courier services, and establishments engaged in operating and maintaining airports, and servicing, repairing or maintaining aircraft (generally classified under SIC Code 45), which have vehicle maintenance shops, material handling facilities, equipment cleaning operations or airport and/or aircraft deicing/anti-icing operations. For the purpose of this section, the term "deicing" is defined as the process to remove frost, snow, or ice and "anti-icing" is the process which prevents the accumulation of frost, snow, or ice. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or deicing/anti-icing operations are addressed under this section.

B. Special conditions.

1. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: aircraft, ground vehicle, runway and equipment washwaters, and dry weather discharges of deicing/anti-icing chemicals. These discharges must be covered by a separate VPDES permit.

2. Releases of reportable quantities of hazardous substances and oil. Each individual permittee is required to report spills as described at Part I B ~~2~~ 3. If an airport authority is the sole permittee, then the sum total of all spills at the airport ~~must~~ shall be assessed against the reportable quantity. If the airport authority is a copermittee with other deicing/anti-icing operators at the airport, such as numerous different airlines, the assessed amount ~~must~~ shall be the summation of spills by each copermittee. If separate, distinct individual permittees exist at the airport, then the amount spilled by each separate permittee ~~must~~ shall be the assessed amount for the reportable quantity determination.

C. Storm water pollution prevention plan requirements. SWPPPs developed for areas of the facility occupied by tenants of the airport shall be integrated with the plan for the entire airport. For the purposes of this permit, tenants of the airport facility include airline passenger or cargo companies, fixed based operators and other parties who have contracts with the airport authority to conduct business operations on airport property and whose operations result in storm water discharges associated with industrial activity. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify ~~where any~~ the location of the following activities and indicate any of the activities that may be exposed to precipitation/surface runoff: aircraft and runway deicing/anti-icing operations; fueling stations; aircraft, ground vehicle and equipment maintenance/cleaning areas; and storage areas for aircraft, ground vehicles and equipment awaiting maintenance.

b. Summary of potential pollutant sources. ~~A~~ The plan shall include a narrative description of the potential pollutant sources from the following activities: aircraft, runway, ground vehicle and equipment maintenance and cleaning; aircraft and runway deicing/anti-icing operations (including apron and centralized aircraft deicing/anti-icing stations, runways, taxiways and ramps). Facilities which conduct deicing/anti-icing operations shall maintain a record of the types (including the Material Safety Data Sheets (MSDS)) and monthly quantities of deicing/anti-icing chemicals used, either as measured amounts, or in the absence of metering, as estimated amounts. This includes all deicing/anti-icing chemicals, not just glycols and urea (e.g., potassium acetate). Tenants and fixed-base operators who conduct deicing/anti-icing operations shall provide the above information to the airport authority for inclusion in the storm water pollution prevention plan for the entire facility.

The SWPPP shall define the average seasonal timeframe (e.g., December-February, October-March, etc.) during which deicing activities typically occur at the facility. Implementation of BMPs, facility inspections and monitoring shall be conducted with particular emphasis throughout the defined deicing season.

2. Storm water controls.

a. Good housekeeping.

(1) Aircraft, ground vehicle and equipment maintenance areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize the contamination of storm water runoff from all areas used for aircraft, ground vehicle and equipment maintenance (including the maintenance conducted on the terminal apron and in dedicated hangars). The following practices (or their equivalents) shall be considered: performing maintenance activities indoors; maintaining an organized inventory of materials used in the maintenance areas; draining all parts of fluids prior to disposal; preventing the practice of hosing down the apron or hangar floor; using dry cleanup methods; and collecting the storm water runoff from the maintenance area and providing treatment or recycling.

(2) Aircraft, ground vehicle and equipment cleaning areas. Permittees ~~should~~ shall ensure that cleaning of equipment is conducted in designated areas only and clearly identify these areas on the ground and delineate them on the site map. The permittee ~~must~~ shall describe and implement measures that prevent or minimize the contamination of the storm water runoff from cleaning areas.

(3) Aircraft, ground vehicle and equipment storage areas. The storage of aircraft, ground vehicles and equipment awaiting maintenance ~~must~~ shall be confined to designated areas (delineated on the site map). The following BMPs (or their equivalents) shall be considered: indoor storage of aircraft and ground vehicles; the use of drip pans for the collection of fluid leaks; and perimeter drains, dikes or berms surrounding storage areas.

(4) Material storage areas. Storage vessels of all materials (e.g., used oils, hydraulic fluids, spent solvents, and waste aircraft fuel) ~~must~~ shall be maintained in good condition, so as to prevent or minimize contamination of storm water, and plainly labeled (e.g., "used oil," "Contaminated Jet A," etc.). The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of precipitation/runoff from storage areas. The following BMPs or their equivalents shall be considered: indoor storage of materials; centralized storage areas for waste materials; and installation of berms/dikes around storage areas.

(5) Airport fuel system and fueling areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize the discharge of fuels to the storm sewer/surface waters resulting from fuel servicing activities or other operations conducted in support of the airport fuel system. The following BMPs (or their equivalents) shall be considered: implementing spill and overflow practices (e.g., placing absorptive materials beneath aircraft during fueling operations); using dry cleanup methods; and collecting the storm water runoff.

b. Source reduction. Owners who conduct deicing/anti-icing operations shall consider alternatives to the use of urea and glycol-based deicing/anti-icing chemicals to reduce the aggregate amount of deicing/anti-icing chemicals used and/or lessen the environmental impact. Chemical options to replace ethylene glycol, propylene glycol and urea include: potassium acetate; magnesium acetate; calcium acetate; anhydrous sodium acetate.

(1) Runway deicing operations. Owners shall evaluate present application rates to ensure against excessive over application by analyzing application rates and adjusting as necessary, consistent with considerations of flight safety. Also the following BMP options shall be considered (or their equivalents): metered application of chemicals; prewetting dry chemical constituents prior to application; installation of runway ice detection systems; implementing anti-icing operations as a preventive measure against ice buildup.

(2) Aircraft deicing/anti-icing operations. Owners shall determine whether excessive application of deicing/anti-icing chemicals occurs, and adjust as necessary, consistent with considerations of flight safety. This evaluation ~~should~~ shall be carried out by the personnel most familiar with the particular aircraft and flight operations in question (versus an outside entity such as the airport authority). The use of alternative deicing/anti-icing agents as well as containment measures for all applied chemicals shall be considered. Also, the following BMP options (or their equivalents) shall be considered for reducing deicing fluid use: forced-air deicing systems; computer-controlled fixed-gantry systems; infrared technology; hot water; varying glycol content to air temperature; enclosed-basket deicing trucks; mechanical methods; solar radiation; hangar storage; aircraft covers; and thermal blankets for MD-80s and DC-9s. The use of ice-detection systems and airport traffic flow strategies and departure slot allocation systems shall also be considered.

c. Management of runoff. Where deicing/anti-icing operations occur, owners shall describe and implement a program to control or manage contaminated runoff to reduce the amount of pollutants being discharged from the site. The plan shall describe the controls used for collecting or containing contaminated melt water from collection areas used for disposal of contaminated snow. The following BMPs (or their equivalents) shall be considered: establishing a dedicated deicing facility with a runoff collection/recovery system; using vacuum/collection trucks; storing contaminated storm water/deicing fluids in tanks and releasing controlled amounts to a publicly owned treatment works; collecting contaminated runoff in a wet pond for biochemical decomposition (be aware of attracting wildlife that may prove hazardous to flight operations); and directing runoff into vegetative swales or other infiltration measures. The plan ~~should~~ shall consider the recovery of deicing/anti-icing materials when these materials are applied during nonprecipitation events (e.g., covering storm sewer inlets, using booms, installing absorptive interceptors in the drains, etc.) to prevent these materials from later becoming a source of storm water contamination. Used deicing fluid ~~should~~ shall be recycled whenever possible.

d. Routine facility inspections. The inspection frequency shall be specified in the plan. At a minimum, inspections shall be conducted once per month during deicing/anti-icing season (e.g., October through April for most airports). If deicing occurs before or after this period, the inspections shall be expanded to include all months during which deicing chemicals may be used. Also, if significantly or deleteriously large quantities of deicing chemicals are being spilled or discharged, or if water quality impacts have been reported, the inspection frequency shall be increased to weekly until such time as the chemical spills/discharges or impacts are reduced to acceptable levels. The director may specifically require increased inspections and the SWPPP to be reevaluated as necessary.

e. Comprehensive site compliance evaluation. The annual site compliance evaluations shall be conducted by qualified facility personnel during periods of actual deicing operations, if possible. If not practicable during active deicing or if the weather is too inclement, the evaluations shall be conducted when deicing operations are likely to occur and the materials and equipment for deicing are in place.

f. Vehicle and equipment washwater requirements. For facilities that discharge vehicle and equipment washwaters to the sanitary sewer system, the operator of the sanitary system and associated treatment plant must be notified. In such cases, a copy of the notification letter shall be attached to the plan. If an industrial user permit is issued under a pretreatment program, a reference to that permit shall be in the plan. In all cases, any permit conditions or pretreatment requirements shall be considered in the plan. If the washwaters are handled in another manner (e.g., hauled off-site), the disposal

method shall be described and all pertinent documentation (e.g., frequency, volume, destination, etc.) shall be attached to the plan.

D. Benchmark monitoring and reporting requirements. Airports that use more than 100,000 gallons of glycol-based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis shall sample their storm water discharges for the parameters listed in Table 260. Only those outfalls from the airport facility that collect runoff from areas where deicing/anti-icing activities occur ~~must~~ shall be monitored. ~~The alternative certification provision of Part I A 3 b is not applicable to discharges covered under this section.~~

Table 260.
Sector S – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut-Off~~ Benchmark Concentration
Facilities at airports that use more than 100,000 gallons of glycol-based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis: monitor ONLY those outfalls from the airport facility that collect runoff from areas where deicing/anti-icing activities occur (SIC 45).	
Biochemical Oxygen Demand (BOD_5)	30 mg/L
Chemical Oxygen Demand (COD)	120 mg/L
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
pH	within the range 6.0 to 9 s.u.
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-270. Sector T - Treatment works.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 9VAC25-31-730 (Industrial Activity Code "TW"). Farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and that are not physically located within the facility, or areas that are in compliance with § 405 of the CWA are not required to have permit coverage.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: sanitary and industrial wastewater; and equipment/vehicle washwaters.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and storage areas for process chemicals, petroleum products, solvents, fertilizers, herbicides and pesticides.

b. Summary of potential pollutant sources. ~~A~~ The plan shall include a description of the potential pollutant sources from the following activities, as applicable: grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and access roads/rail lines.

2. Storm water controls.

a. Best Management Practices (BMPs). In addition to the other BMPs considered, the following BMPs shall be considered: routing storm water to the treatment works; or covering exposed materials (i.e., from the following areas: grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station).

b. Inspections. The following areas shall be included in all inspections: access roads/rail lines, grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station areas.

c. Employee training. Employee training ~~must~~ shall, at a minimum, address the following areas when applicable to a facility: petroleum product management; process chemical management; spill prevention and control; fueling procedures; general good housekeeping practices; proper procedures for using fertilizers, herbicides and pesticides.

~~d. Nonstorm water discharges. For facilities that discharge vehicle and equipment washwaters to the sanitary sewer system, the operator of the sanitary system and associated treatment plant must be notified. In such cases, a copy of the notification letter must be attached to the plan. If an industrial user permit is issued under a pretreatment program, a reference to that permit must be in the plan. These provisions do not apply if the~~

~~discharger and the operator of the treatment works receiving the discharge are the same. In all cases, any permit conditions must be considered in the plan. If vehicle and equipment washwaters are handled in another manner (e.g., hauled off-site), the disposal method must be described and all pertinent documentation (e.g., frequency, volume, destination, etc.) must be attached to the plan.~~

9VAC25-151-280. Sector U - Food and kindred products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from food and kindred products processing facilities (commonly identified by SIC Code 20), including: meat products; dairy products; canned, frozen and preserved fruits, vegetables, and food specialties; grain mill products; bakery products; sugar and confectionery products; fats and oils; beverages; and miscellaneous food preparations and kindred products and tobacco products manufacturing (SIC Code 21).

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging, and vehicle washing/clean-out operations.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify the locations of the following activities if they are exposed to precipitation/surface runoff: vents/stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage areas.

b. Summary of potential pollutant sources. In addition to food and kindred products processing-related industrial activities, the plan ~~must~~ shall also describe application and storage of pest control chemicals (e.g., rodenticides, insecticides, fungicides, etc.) used on plant grounds.

2. Storm water controls.

a. Routine facility inspections. At a minimum, the following areas, where the potential for exposure to storm water exists, ~~must~~ shall be inspected on a monthly basis: loading and unloading areas for all significant materials; storage areas, including associated containment areas; waste management units; vents and stacks emanating from industrial activities; spoiled product and broken product container holding areas; animal holding pens; staging areas; and air pollution control equipment.

b. Employee training. The employee training program ~~must~~ shall also address pest control.

D. Benchmark monitoring and reporting requirements. ~~Grain~~ Dairy products, grain mills and fats and oils products facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 280.

Table 280.
Sector U – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut-Off~~ Benchmark Concentration
Dairy Products (SIC 2021-2026)	
Biochemical Oxygen Demand (BOD_5)	30 mg/L
Total Suspended Solids (TSS)	100 mg/L
Grain Mill Products (SIC 2041-2048)	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
Total Suspended Solids (TSS)	100 mg/L
Fats and Oils Products (SIC 2074-2079)	
Biochemical Oxygen Demand (BOD_5)	30 mg/L
Total Nitrogen	2.2 mg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-290. Sector V - Textile mills, apparel, and other fabric products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from textile mills, apparel and other fabric product manufacturing, generally described by SIC 22 and 23. This section also covers facilities engaged in manufacturing finished leather and artificial leather products (SIC 31, except 3111). Facilities in this sector are primarily engaged in the following activities: textile mill products, of and regarding facilities and establishments engaged in the preparation of fiber and subsequent manufacturing of yarn, thread, braids, twine, and cordage, the manufacturing of broad woven fabrics, narrow woven fabrics, knit fabrics, and carpets and rugs from yarn; processes involved in the dyeing and finishing of fibers, yarn fabrics, and knit apparel; the integrated manufacturing of knit apparel and other finished articles of yarn; the manufacturing of felt goods (wool), lace goods, nonwoven fabrics, miscellaneous textiles, and other apparel products.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: discharges of wastewater (e.g., wastewater as a result of wet processing or from any processes relating to the production process); reused/recycled water; and waters used in cooling towers. These discharges must be covered under a separate VPDES permit.

C. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description. Summary of potential pollutant sources. ~~A~~ The plan shall include a description of the potential pollutant sources from the following activities: industry-specific significant materials and industrial activities (e.g., backwinding, beaming, bleaching, backing, bonding carbonizing, carding, cut and sew operations, desizing, drawing, dyeing~~, flocking~~ locking, fulling, knitting, mercerizing, opening, packing, plying, scouring, slashing, spinning, synthetic-felt processing, textile waste processing, tufting, turning, weaving, web forming, winging, yarn spinning, and yarn texturing).

2. Storm water controls.

a. Good housekeeping measures.

(1) Material storage areas. All containerized materials ~~(fuels, petroleum products, solvents, dyes, etc.) must~~ (e.g., fuels, petroleum products, solvents, dyes, etc.) shall be clearly labeled and stored in a protected area, away from drains. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of storm water runoff from such storage areas, and ~~must~~ shall include a description of the containment area or enclosure for those materials that are stored outdoors. The permittee may consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances. The permittee shall ensure that empty chemical drums/containers are clean ~~(triple rinsing should be considered)~~ (triple-rinsing shall be considered) and residuals are not subject to contact with precipitation/runoff. Washwater from these cleanings ~~must~~ shall be collected and disposed of properly.

(2) Material handling area. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from materials handling operations and areas. The permittee shall consider the following measures (or their equivalents): use of spill/overflow protection; covering fueling areas; and covering and enclosing areas where the transfer of materials may occur. Where applicable, the plan ~~must~~ shall address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, dyes, or wastewater.

(3) Fueling areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from fueling areas. The permittee shall consider the following measures (or their equivalents): covering the fueling area; using spill and overflow protection; minimizing runon of storm water to the fueling areas; using dry cleanup methods; and treating and/or recycling storm water runoff collected from the fueling area.

(4) Aboveground storage tank areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from aboveground storage tank areas, including the associated piping and valves. The permittee shall consider the following measures (or their equivalents): regular cleanup of these areas; preparation of a spill prevention control and countermeasure program~~;~~ (SPCC) to provide spill and overflow protection; minimizing runon of storm water from adjacent areas; restricting access to the area; insertion of filters in adjacent catch basins; absorbent booms in unbermed fueling areas; use of dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.

b. Routine facility inspections. Inspections shall be conducted at least monthly, and shall include the following activities and areas (at a minimum): transfer and transmission lines; spill prevention; good housekeeping practices; management of process waste products; all structural and nonstructural management practices.

c. Employee training. Employee training ~~must~~ shall, at a minimum address, the following areas when applicable to a facility: use of reused/recycled waters; solvents management; proper disposal of dyes; proper disposal of petroleum products and spent lubricants; spill prevention and control; fueling procedures; and general good housekeeping practices.

d. Comprehensive Site Compliance Evaluation. Regularly scheduled evaluations shall be conducted at least once a year and address those areas contributing to a storm water discharge associated with industrial activity. Inspections ~~should~~ shall look for evidence of, or the potential for, pollutants entering the drainage system from the following areas, as appropriate: storage tank areas; waste disposal and storage areas; dumpsters and open containers stored outside; materials storage areas; engine maintenance and repair areas; material handling areas and loading dock areas.

9VAC25-151-310. Sector X - Printing and publishing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from printing and publishing facilities (generally classified under SIC Major Group 27), and include the following types of facilities: newspaper, periodical, and book publishing and/or printing (SIC Codes 271 through 273); miscellaneous publishing (SIC Code 274); commercial printing (SIC Code 275); manifold business forms, greeting cards, bankbooks, looseleaf binders and book binding and related work (SIC Codes 276 through 278); and service industries for the printing trade (SIC 279).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: aboveground storage tanks, drums and barrels permanently stored outside.

b. Summary of potential pollutant sources. The plan shall include a description of the following additional sources and activities that have potential pollutants associated with them, as applicable: loading and unloading operations; outdoor storage activities; significant dust or particulate generating processes; and on-site waste disposal practices (e.g., blanket wash). Also, the pollutant or pollutant parameter (e.g., oil and grease, scrap metal, etc.) associated with each pollutant source shall be identified ~~(e.g., oil and grease, scrap metal, etc.)~~.

2. Storm water controls.

a. Good housekeeping measures.

(1) Material storage areas. All containerized materials (skids, pallets, solvents, bulk inks, and hazardous waste, empty drums, portable/mobile containers of plant debris, wood crates, steel racks, fuel oil, etc.) ~~should~~ shall be properly labeled and stored in a protected area, away from drains. The permittee shall describe and implement measures that prevent or minimize contamination of the storm water runoff from such storage areas and shall include a description of the containment area or enclosure for those materials which are stored outdoors. The permittee may consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances.

(2) Material handling areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from material handling operations and areas (e.g., blanket wash, mixing solvents, loading/unloading materials). The permittee shall consider the following measures (or their equivalents): the use of spill/overflow protection; covering fuel areas; and covering/enclosing areas where the transfer of materials may occur. ~~Where~~ When applicable, the plan ~~must~~ shall address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, or wastewater.

(3) Fueling areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from fueling areas. The permittee shall consider the following measures (or their equivalents): covering the fueling area; using spill and overflow protection; minimizing runon of storm water to the fueling area; using dry cleanup methods; and treating and/or recycling storm water runoff collected from the fueling areas.

(4) Aboveground storage tank areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from aboveground storage tank areas, including the associated piping and valves. The permittee shall consider the following measures (or their equivalents): regular cleanup of these areas; preparation of a spill prevention control and countermeasure program~~;~~ (SPCC) to provide spill and overflow protection; minimizing runon of storm water from adjacent facilities and properties; restricting access to the area; insertion of filters in adjacent catch basins; absorbent booms in unbermed fueling areas; use of dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.

b. Employee training. Employee training ~~must~~ shall, at a minimum, address the following areas when applicable to a facility: spent solvent management; spill prevention and control; used oil management; fueling procedures; and general good housekeeping practices.

9VAC25-151-320. Sector Y - Rubber, miscellaneous plastic products, and miscellaneous manufacturing industries.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from rubber and miscellaneous plastic products manufacturing facilities (SIC Major Group 30) and miscellaneous manufacturing industries, except jewelry, silverware, and plated ware (SIC Major Group 39, except 391).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description. Summary of potential pollutant sources. ~~The permittee~~ Rubber manufacturing facilities shall review the use of zinc at the facility and the possible pathways through which zinc may be discharged in storm water runoff.

2. Storm water controls.

a. Controls for rubber manufacturers. ~~The permittee~~ Rubber manufacturing facilities shall describe and implement specific controls to minimize the discharge of zinc in storm water discharges from the facility. ~~The following~~ Subdivision 2 of this subsection lists possible sources of zinc. These shall be reviewed and the accompanying BMPs (or their equivalents) shall be considered in the SWPPP. Also, some general BMP options to consider include: using chemicals that are purchased in pre-weighed, sealed polyethylene bags; storing materials that are in use in sealable containers; ensuring an airspace between the container and the cover to minimize "puffing" losses when the container is opened; and using automatic dispensing and weighing equipment.

~~a.~~ (1) Inadequate housekeeping. All permittees shall review the handling and storage of zinc bags at their facilities and consider the following BMP options: employee training regarding the handling/storage of zinc bags; indoor storage of zinc bags; cleanup of zinc spills without washing the zinc into the storm drain; and the use of 2,500-pound sacks of zinc rather than 50- to 100-pound sacks.

~~b.~~ (2) Dumpsters. The following BMPs shall be considered to reduce discharges of zinc from dumpsters: providing a cover for the dumpster; move the dumpster to an indoor location; or provide a lining for the dumpster.

~~c.~~ (3) Malfunctioning dust collectors or baghouses. Permittees shall review dust collectors/baghouses as possible sources in zinc in storm water runoff. Improperly operating dust collectors/baghouses shall be replaced or repaired as appropriate.

~~d.~~ (4) Grinding operations. Permittees shall review dust generation from rubber grinding operations at their facility and, as appropriate, install a dust collection system.

~~e.~~ (5) Zinc stearate coating operations. Permittees shall include in the SWPPP appropriate measures to prevent or clean up drips/spills of zinc stearate slurry that may be released to the storm drain. Alternate compounds to zinc stearate shall also be considered.

b. Controls for plastic products manufacturers. Plastic products manufacturing facilities shall describe and implement specific controls to minimize the discharge of plastic resin pellets in stormwater discharges from the facility. The following BMPs (or their equivalents) shall be considered in the SWPPP: minimizing spills; cleaning up of spills promptly and thoroughly; sweeping thoroughly; pellet capturing; employee education; and disposal precautions.

C. Benchmark monitoring and reporting requirements. Rubber product manufacturing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 320.

Table 320.
Sector Y – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut Off~~ Benchmark Concentration
Tires and Inner Tubes; Rubber Footwear; Gaskets, Packing and Sealing Devices; Rubber Hose and Belting; and Fabricated Rubber Products, Not Elsewhere Classified (SIC 3011-3069).	
Total Recoverable Zinc	120 µg/L
Total Recoverable Lead	120 µg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-330. Sector Z - Leather tanning and finishing.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from leather tanning, currying and finishing (commonly identified by SIC Code 3111).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: processing and storage areas of the beamhouse, tanyard, retan-wet finishing and dry finishing operations; and haul roads, access roads and rail spurs.

b. Summary of potential pollutant sources. A description of potential pollutant sources including (as appropriate): temporary or permanent storage of fresh and brine cured hides; chemical drums, bags, containers and aboveground tanks; leather dust, scraps, trimmings and shavings; spent solvents; extraneous hide substances and hair; empty chemical containers and bags; floor sweepings/washings; refuse ~~and~~, waste piles and sludge; and significant dust/particulate generating processes (e.g., buffing).

2. Storm water controls.

a. Good housekeeping.

(1) Storage areas for raw, semiprocessed, or finished tannery by-products. Pallets/bales of raw, semiprocessed or finished tannery by-products (e.g., splits, trimmings, shavings, etc.) ~~should~~ shall be stored indoors or protected

by polyethylene wrapping, tarpaulins, roofed storage area or other suitable means. Materials ~~should~~ shall be placed on an impermeable surface, the area ~~should~~ shall be enclosed or bermed, or other equivalent measures ~~should~~ shall be employed to prevent runon/runoff of storm water.

(2) Material storage areas. ~~Label storage~~ Storage units of all materials should be labeled (e.g., specific chemicals, hazardous materials, spent solvents, waste materials). ~~Describe~~ The permittee shall describe and implement measures that prevent or minimize contact with storm water.

(3) Buffing and shaving areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff with leather dust from buffing/shaving areas. The permittee may consider dust collection enclosures, preventive inspection/maintenance programs or other appropriate preventive measures.

(4) Receiving, unloading, and storage areas. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from receiving, unloading, and storage areas. The following measures (or their equivalents) shall be considered for exposed receiving, unloading and storage areas: hides and chemical supplies protected by a suitable cover; diversion of drainage to the process sewer; and grade berming/curbing area to prevent runoff of storm water.

(5) Outdoor storage of contaminated equipment. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contact of storm water with contaminated equipment. The following measures (or their equivalents) shall be considered: equipment protected by suitable cover; diversion of drainage to the process sewer; thorough cleaning prior to storage.

(6) Waste management. The permittee ~~must~~ shall describe and implement measures that prevent or minimize contamination of the storm water runoff from waste storage areas. The permittee shall consider the following measures (or their equivalents): inspection/maintenance programs for leaking containers or spills; covering dumpsters; moving waste management activities indoors; covering waste piles with temporary covering material such as tarpaulins or polyethylene; and minimizing storm water runoff by enclosing the area or building berms around the area.

C. Benchmark monitoring and reporting requirements. Leather tanning and finishing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 330.

Table 330.
Sector Z – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut-Off~~ Benchmark Concentration
Leather Tanning and Finishing (SIC 3111)	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-340. Sector AA - Fabricated metal products.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from the fabricated metals industry listed below, except for electrical related industries: fabricated metal products, except machinery and transportation equipment (SIC Code 34); and jewelry, silverware, and plated ware (SIC Code 391).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site Map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: raw metal storage areas; finished metal storage areas; scrap disposal collection sites; equipment storage areas; retention and detention basins; temporary/permanent diversion dikes or berms; right-of-way or perimeter diversion devices; sediment traps/barriers; processing areas including outside painting areas; wood preparation; recycling; and raw material storage.

b. Spills and Leaks. When listing significant spills/leaks, the permittee shall pay attention to the following materials, at a minimum: chromium, toluene, pickle liquor, sulfuric acid, zinc and other water priority chemicals and hazardous chemicals and wastes.

c. Summary of potential pollutant sources. ~~A~~ The plan shall include a description of the potential pollutant sources from the following activities: loading and unloading operations for paints, chemicals and raw materials; outdoor storage activities for raw materials, paints, empty containers, corn cob, chemicals, scrap metals; outdoor manufacturing or processing activities such as grinding, cutting, degreasing, buffing, brazing, etc.; and on-site waste disposal practices for spent solvents, sludge, pickling baths, shavings, ingots pieces, refuse and waste piles.

2. Storm water controls.

a. Good housekeeping.

(1) Raw steel handling storage. ~~Describe~~ The permittee shall describe and implement measures controlling or recovering scrap metals, fines, and iron dust, including measures for containing materials within storage handling areas.

(2) Paints and painting equipment. ~~Describe~~ The permittee shall describe and implement measures to prevent or minimize exposure of paint and painting equipment from exposure to storm water.

b. Spill prevention and response procedures. The permittee shall ensure that the necessary equipment to implement a clean up is available to personnel. The following areas ~~should~~ shall be addressed:

(1) Metal fabricating areas. ~~Describe~~ The permittee shall describe and implement measures for maintaining clean, dry, orderly conditions in these areas. Use of dry clean-up techniques ~~should~~ shall be considered in the plan.

(2) Storage areas for raw metal. ~~Describe~~ The permittee shall describe and implement measures to keep these areas free of conditions that could cause spills or leakage of materials. The following measures (or their equivalents) ~~should~~ shall be considered: storage areas maintained such that there is easy access in the event of a spill; stored materials labeled to aid in identifying spill contents.

(3) Receiving, unloading, and storage areas. ~~Describe~~ The permittee shall describe and implement measures to prevent spills and leaks; plan for quick remedial clean up and instruct employees on clean-up techniques and procedures.

(4) Storage of equipment. ~~Describe~~ The permittee shall describe and implement measures for preparing equipment for storage and the proper method to store equipment. The following measures (or their equivalents) shall be considered: protecting with covers; storing indoors; and cleaning potential pollutants from equipment to be stored outdoors.

(5) Metal working fluid storage areas. ~~Describe~~ The permittee shall describe and implement measures for storage of metal working fluids.

(6) Cleaners and rinse water. ~~Describe~~ The permittee shall describe and implement measures to control/cleanup spills of solvents and other liquid cleaners; control sand buildup and disbursement from sand-blasting operations; and prevent exposure of recyclable wastes. Environmentally benign cleaners ~~should~~ shall be substituted when possible.

(7) Lubricating oil and hydraulic fluid operations. ~~Consider~~ The permittee shall consider using devices or monitoring equipment or other devices to detect and control leaks/overflows. ~~Consider the~~ The installation of perimeter controls such as dikes, curbs, grass filter strips, or other equivalent measures shall also be considered.

(8) Chemical storage areas. ~~Describe~~ The permittee shall describe and implement proper storage methods that prevent storm water contamination and accidental spillage. The plan ~~should~~ shall include a program to inspect containers, and identify proper disposal methods.

c. Inspections. Metal fabricators shall at a minimum include the following areas for inspection: raw metal storage areas; finished product storage areas; material and chemical storage areas; recycling areas; loading and unloading areas; equipment storage areas; paint areas; and vehicle fueling and maintenance areas.

d. Comprehensive site compliance evaluation. The site compliance evaluation shall also include inspections of: areas associated with the storage of raw metals; storage of spent solvents and chemicals; outdoor paint areas; and roof drainage. Potential pollutants include chromium, zinc, lubricating oil, solvents, aluminum, oil and grease, methyl ethyl ketone, steel and other related materials.

C. Benchmark monitoring and reporting requirements. Metal fabricating facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table 340.

Table 340.
Sector AA – Benchmark Monitoring Requirements.

Pollutants of Concern	~~Monitoring Cut Off~~ Benchmark Concentration
Fabricated Metal Products Except Coating (SIC 3411-3471, 3482-3499, 3911-3915)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	~~1~~ 1.0 mg/L
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L
Fabricated Metal Coating and Engraving (SIC 3479)	
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-350. Sector AB - transportation equipment, industrial, or commercial machinery.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from transportation equipment, industrial or commercial machinery manufacturing facilities (commonly described by SIC Major Group 35 (except SIC Code 357), and SIC Major Group 37 (except SIC Code 373)).

B. Storm water pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: vents and stacks from metal processing and similar operations.

2. Storm water controls. Nonstorm water discharges. For facilities that discharge wastewater, other than solely domestic wastewater, to the sanitary sewer system, the permittee ~~must~~ shall notify the operator of the sanitary sewer and associated treatment works of its discharge. In such cases, a copy of a notification letter ~~must~~ shall be attached to the plan. Any specific permit conditions ~~must~~ shall be considered in the plan.

9VAC25-151-360. Sector AC - Electronic, electrical equipment and components, photographic and optical goods.

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities that manufacture: electronic and other electrical equipment and components, except computer equipment (SIC Major Group 36); measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks (SIC Major Group 38) and computer and office equipment (SIC Code 357).

B. Additional requirements. No additional sector-specific requirements apply to this sector.

C. Benchmark monitoring and reporting requirements. Electronic and electrical equipment and components facilities (except computers) (SIC 3612-3699) are required to monitor their storm water discharges for the pollutants of concern listed in Table 360.

Table 360.
Sector AC - Benchmark Monitoring Requirements.

Pollutants of Concern	Benchmark Concentration
Electronic and Electrical Equipment and Components, except Computers (SIC 3612-3699)	
Total Recoverable Copper	18 µg/L
Total Recoverable Lead	120 µg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-370. Sector AD - Nonclassified facilities/storm water discharges designated by the board as requiring permits.

A. Discharges covered under this section. Sector AD is used to provide permit coverage for facilities designated by the board as needing a storm water permit, or any discharges of industrial activity that do not meet the description of an industrial activity covered by Sectors A-AC. Therefore, almost any type of storm water discharge could be covered under this sector. Permittees ~~must~~ shall be assigned to Sector AD by the director and may not choose Sector AD as the sector describing the facility's activities.

B. Additional requirements. No additional sector-specific requirements apply to this sector.

C. Benchmark monitoring and reporting requirements. Nonclassified facilities/storm water discharges designated by the board as requiring permits are required to monitor their storm water discharges for the pollutants of concern listed in Table 370.

Table 370.
Sector AD - Benchmark Monitoring Requirements.

Pollutants of Concern	Benchmark Concentration
Nonclassified Facilities/Storm Water Discharges Designated By the Board As Requiring Permits	
Total Suspended Solids (TSS)	100 mg/L

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (9VAC25-151)

Department of Environmental Quality Water Quality Division Permit Application Fee Form ~~(rev. 7/02)~~ (rev. 1/08).

VPDES General Permit Registration Statement – Industrial Activity Storm Water Discharges, SWGP VAR05-RS ~~(eff. 7/04)~~ (eff. 7/09).

VPDES General Permit Notice of Termination – Industrial Activity Storm Water Discharges, SWGP VAR05-NOT ~~(eff. 7/04)~~ (eff. 7/09).

Virginia Pollutant Discharge Elimination System (VPDES) Discharge Monitoring Report (DMR) – Industrial Activity Storm Water Discharges ~~(eff. 7/04)~~ (eff. 7/09).

VPDES Change of Ownership Agreement Form.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-151)

Standard Industrialization Classification (SIC) Manual, 1987, Office of Management and Budget.

Modified DRO Method for Determining Diesel Range Organics, PUBL-SW-141, September 1995, Wisconsin Department of Natural Resources.

Method 8015C, Nonhalogenated Organics Using GC/FID, Revision 3, February 2007, U.S. Government Printing Office.

Method 8270D, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 4, February 2007, U.S. Government Printing Office.

VA.R. Doc. No. R08-1078; Filed October 22, 2008, 10:51 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board has claimed an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-210. Virginia Water Protection Permit Program Regulation (amending 9VAC25-210-10, 9VAC25-210-50, 9VAC25-210-60, 9VAC25-210-130, 9VAC25-210-220).**

Statutory Authority: § 62.1-44.155 of the Code of Virginia; § 401 of the Clean Water Act.

Effective Date: December 10, 2008.

Agency Contact: David L. Davis, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, FAX (804) 698-4032, or email dldavis@deq.virginia.gov.

Summary:

No Virginia Water Protection permit is required for the construction and maintenance of agricultural or silvicultural ponds or impoundments that meet specific criteria of the Virginia Soil and Water Conservation Board pursuant to Article 2 (§ 10.1-604 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia. The amendments conform the regulation to the Code of Virginia. Additionally, several processing forms used by the Virginia Water Permit program are updated.

9VAC25-210-10. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"Act" or "Clean Water Act" means 33 USC § 1251 et seq. as amended 1987.

"Adjacent" means bordering, contiguous or neighboring; wetlands separated from other surface water by man-made dikes or barriers, natural river berms, sand dunes and the like are adjacent wetlands.

"Affected stream reach" means the portion of a surface water body beginning at the location of a withdrawal and ending at a point where effects of the withdrawal are not reasonably expected to adversely affect beneficial uses.

"Agricultural surface water withdrawal" means a withdrawal of surface water in Virginia or from the Potomac River for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural surface water withdrawals include withdrawals for turf farm operations, but do not include withdrawals for landscaping activities, or turf installment and maintenance associated with landscaping activities.

"Applicant" means a person applying for a VWP individual permit or VWP general permit authorization.

"Aquatic environment" means surface waters and the habitat they provide, including both plant and animal communities.

"Avoidance" means not taking or modifying a proposed action or parts of an action so that there is no adverse impact to the aquatic environment.

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to: the protection of fish and wildlife habitat; maintenance of waste assimilation; recreation; navigation; and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to: domestic (including public water supply); agricultural; electric power generation; and commercial and industrial uses.

"Best management practices (BMPs)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices that prevent or reduce the pollution of surface waters.

"Board" means the State Water Control Board.

"Channelization of streams" means alteration of a stream by widening, deepening, straightening, cleaning, or paving.

"Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.

"Consumptive water use" means the withdrawal of surface waters, without recycle of said waters to their source of origin.

"Creation" means the establishment of a wetland or other aquatic resource where one did not formerly exist.

"Cross-sectional sketch" means a scaled graph or plot that represents the plane made by cutting across an object at right angles to its length. For purposes of this regulation, objects may include, but are not limited to, a surface water body or a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

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

"Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of any pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

"Draft VWP permit" means a document indicating the board's tentative decision relative to a VWP permit action.

"Draining" means human-induced activities such as ditching, excavation, installation of tile drains, hydrologic modification by surface water runoff diversion, pumping water from wells, or similar activities such that the activities have the effect of artificially dewatering the wetland or altering its hydroperiod.

"Dredged material" means material that is excavated or dredged from surface waters.

"Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

"Drought" means that a Severe Intensity Drought (D2) has been declared by the weekly "U.S. Drought Monitor" for the location in which the withdrawal is located.

"Ecologically preferable" means capable of providing a higher likelihood of replacing existing wetland or stream functions and values, water quality and fish and wildlife resources than alternative proposals.

"Emergency Virginia Water Protection Permit" means a Virginia Water Protection Permit issued pursuant to § 62.1-44.15:22 C of the Code of Virginia authorizing a new or increased surface water withdrawal to address insufficient public drinking water supplies that are caused by a drought and may result in a substantial threat to human health or public safety.

"Enhancement" means activities conducted in existing wetlands or other portions of the aquatic environment that increase one or more aquatic functions or values.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris.

"Fill material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose.

"General permit" means a permit authorizing a specified category of activities.

"Geographic area of a delineated wetland" means the area contained within and up to a wetland boundary determined by delineation methods consistent with this chapter.

"Impacts" means results caused by human-induced activities conducted in surface waters, as specified in § 62.1-44.15:20 A of the Code of Virginia.

"Impairment" means the damage, loss or degradation of the functions and values of state waters.

"In-lieu fee fund" means a monetary fund operated by a nonprofit organization or governmental agency which receives financial contributions from persons impacting wetlands or streams pursuant to an authorized permitted activity and which expends the moneys received to provide consolidated compensatory mitigation for permitted wetland or stream impacts.

"Intake structure" means any portion of a withdrawal system used to withdraw surface water that is located within the surface water, such as, but not limited to, a pipe, culvert, hose, tube, or screen.

"Isolated wetlands of minimal ecological value" means those wetlands that: (i) do not have a surface water connection to other state waters; (ii) are less than one-tenth of an acre (0.10 acre or 4,356 square feet) in size; (iii) are not located in a Federal Emergency Management Agency designated 100-year floodplain; (iv) are not identified by the Virginia Natural Heritage Program as a rare or state significant natural community; (v) are not forested; and (vi) do not contain listed federal or state threatened or endangered species.

"Joint Permit Application (JPA)" means an application form that is used to apply for permits from the Norfolk District Army Corps of Engineers, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetland boards for work in waters of the United States and in surface waters of Virginia.

"Law" means the State Water Control Law of Virginia.

"Major surface water withdrawal" means a surface water withdrawal of 90 million gallons per month (mgm) or greater.

"Minimization" means lessening impacts by reducing the degree or magnitude of the proposed action and its implementation.

"Minor surface water withdrawal" means a surface water withdrawal of less than 90 million gallons per month (mgm).

"Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

"Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and approved in accordance with all applicable federal and state laws or regulations for the establishment, use and operation of mitigation banks, and is operating under a signed banking agreement.

"Mitigation banking" means compensating for unavoidable wetland or stream losses in advance of development actions through the sale, purchase or use of credits from a mitigation bank.

"Multi-project mitigation site" means an area of wetland restoration, creation, enhancement and, in appropriate circumstances, preservation of wetlands or streams or upland buffers adjacent to wetlands or other state waters, that is or has been utilized to meet compensation requirements for more than one project but that is not a mitigation bank.

"Nationwide permit" means a general permit issued by the USACE under 40 CFR Part 241 and, except where suspended by individual USACE Corps Districts, applicable nationwide.

"Normal agricultural activities" means those activities defined as an agricultural operation in ~~§ 3.1-22.29~~ § 3.2-300 of the Code of Virginia and any activity that is conducted as part of or in furtherance of such agricultural operation, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant thereto.

"Normal residential gardening, lawn and landscape maintenance" means ongoing noncommercial residential activities conducted by or on behalf of an individual occupant, including mowing, planting, fertilizing, mulching, tilling, vegetation removal by hand or by hand tools, placement of decorative stone, fencing and play equipment. Other appurtenant noncommercial activities, provided that they do not result in the conversion of a wetland to upland or to a different wetland type, may also be included.

"Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 of the Code of Virginia, and any activity that is conducted as part of or in furtherance of such silvicultural activity, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant thereto.

"Out-of-kind mitigation" means compensatory mitigation that does not replace the same type of wetland or surface water as was impacted, but does replace lost wetland or surface water functions, values, or beneficial uses.

"Permanent flooding or impounding" means a permanent increase in the duration or depth of standing water on a land surface, such as from a dam. Permanent increases in duration or depth of standing water that result from extended-detention basins and enhanced extended-detention basins, when designed, constructed, and maintained to function in accordance with Virginia Department of Conservation and Recreation (DCR) standards for such facilities (Virginia Stormwater Management Handbook, First Edition, 1999, Volume 1, Chapter 3), or when designed in accordance with local standards that, at a minimum, meet the DCR standards, are not considered to be permanent flooding and impounding.

"Permanent impacts" are those impacts to surface waters, including wetlands that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters or of the functions and values of a wetland.

"Permittee" means the person who holds a VWP individual or general permit.

"Person" means one or more individuals, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

"Plan view sketch" means a scaled graph or plot that represents the view of an object as projected onto orthogonal planes. For purposes of this regulation, objects may include, but are not limited to, structures, contours, or boundaries.

"Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter.

"Potomac River Low Flow Allocation Agreement" means the agreement among the United States of America, the State of Maryland, the Commonwealth of Virginia, the District of Columbia, the Washington Suburban Sanitation Commission, and the Fairfax County Water Authority dated January 11, 1978, consented to by Congress in § 181 of the Water Resources Development Act of 1976, Public Law 94-587, as modified on April 22, 1986.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes.

"Preservation" means the protection of resources in perpetuity through the implementation of appropriate legal and physical mechanisms.

"Profile sketch" means a scaled graph or plot that represents the side view of an object. For purposes of this regulation, objects may include, but are not limited to, a surface water body or a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views and comments to the board pursuant to the board's Procedural Rule No. 1 - Public and Formal Hearing Procedures (9VAC25-230).

"Public surface water supply withdrawal" means a withdrawal of surface water in Virginia or from the Potomac River for the production of drinking water, distributed to the general public for the purpose of, but not limited to, domestic use.

"Public water supply emergency" means a substantial threat to public health or safety due to insufficient public drinking water supplies caused by drought.

"Regional permit" means a general permit issued by the USACE under 40 CFR Part 241 and applicable within a specified geographic area.

"Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.

"Schedule of compliance" means a schedule of remedial measures including a sequence of enforceable actions or operations leading to compliance with the Act, the law, and the board regulations, standards and policies.

"Section 401" means § 401 of the Clean Water Act, or 33 USC § 1341, as amended in 1987.

"Section for Cooperative Water Supply Operations on the Potomac (CO-OP)" means a section of the Interstate Commission on the Potomac River Basin designated by the Water Supply Coordination Agreement as responsible for coordination of water resources during times of low flow in the Potomac River.

"Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions.

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

"Surface water" means all state waters that are not ground water as defined in § 62.1-255 of the Code of Virginia.

"Surface water supply project" means a project that withdraws or diverts water from a surface water body for consumptive or nonconsumptive purposes thereby altering the hydrologic regime of the surface water body. Projects that do not alter the hydrologic regime or that alter the hydrologic regime but whose sole purpose is flood control or storm water management are not included in this definition.

"Surface water withdrawal" means a removal or diversion of surface water from its natural water course in Virginia or from the Potomac River.

"Temporary impacts" means those impacts to surface waters, including wetlands, that do not cause a permanent alteration of the physical, chemical or biological properties of the surface water or of the functions and values of a wetland. Temporary impacts include activities in which the ground is restored to its preconstruction contours and elevations, such that previous functions and values are restored.

"Toxic pollutant" means any agent or material including, but not limited to, those listed under § 307(a) of the Act (33 USC § 1317(a)), which after discharge will, on the basis of available information, cause toxicity. Toxicity means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health or other adverse environmental effects.

"Undesirable plant species" means any species that invades, naturally colonizes, or otherwise dominates a compensatory mitigation site or mitigation bank and may cause or contribute to the failure of the vegetative success criteria for a particular compensatory mitigation site or mitigation bank.

"USACE" means the United States Army Corps of Engineers.

"VMRC" means the Virginia Marine Resources Commission.

"VWP general permit" means a regulation that constitutes a VWP permit for a category of activities.

"VWP permit" means an individual or general permit issued by the board under § 62.1-44.15:20 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-

44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's § 401 certification.

"Water quality standards" means water quality standards adopted by the board and approved by the administrator of the EPA under § 303 of the Act as defined at 9VAC25-260.

"Water Supply Coordination Agreement" means the agreement among the United States of America, the Fairfax County Water Authority, the Washington Suburban Sanitary Commission, the District of Columbia, and the Interstate Commission on the Potomac River Basin, dated July 22, 1982, which establishes agreement among the suppliers to operate their respective water supply systems in a coordinated manner and which outlines operating rules and procedures for reducing impacts of severe droughts in the Potomac River Basin.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Withdrawal system" means any device or combination of evices used to withdraw surface water, such as, but not limited to, a machine, pump, pipe, culvert, hose, tube, screen, or fabricated concrete or metal structure.

9VAC25-210-50. Prohibitions and requirements for VWP permits.

A. Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland:

1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

2. Filling or dumping;

3. Permanent flooding or impounding; or

4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

B. No VWP permit shall be issued for the following:

1. Where the proposed activity or the terms or conditions of the VWP permit do not comply with state law or regulations including but not limited to § 10.1-1408.5 of the Code of Virginia;

2. For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into surface waters.

9VAC25-210-60. Exclusions.

A. The following activities do not require a VWP permit but may require other permits under state and federal law:

1. Discharges of dredged or fill material into state waters, excepting wetlands, which are addressed under a USACE Regional, General or Nationwide Permit, and for which no § 401 Water Quality Certificate is required.

2. Discharges of dredged or fill material into wetlands when addressed under a USACE Regional, General, or Nationwide Permit and that meet the provisions of subdivision 10 a of this subsection.

~~2.~~ 3. Any discharge, other than an activity in a surface water governed by § 62.1-44.15:20 of the Code of Virginia, permitted by a Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with 9VAC25-31.

~~3.~~ 4. Any activity, other than an activity in a surface water governed by § 62.1-44.15:20 of the Code of Virginia, permitted by a Virginia Pollution Abatement (VPA) permit in accordance with 9VAC25-32.

~~4.~~ 5. Septic tanks, when authorized by a state Department of Health permit.

~~5.~~ 6. Any activity permitted under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, unless state certification is required by § 401 of the Clean Water Act. State certification is waived if the activity meets the provisions of subdivision 10 a of this subsection. The activity does not require a VWP permit pursuant to § 62.1-44.15:21 H of the Code of Virginia.

~~6.~~ 7. Normal residential gardening, lawn and landscape maintenance in a wetland.

~~7.~~ 8. Normal agriculture and silviculture activities in a wetland such as plowing, seeding, cultivating, minor drainage and harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices.

a. To fall under this exclusion, the activities specified in subdivision ~~7~~ 8 of this section must be part of an established (i.e., ongoing) agriculture or silviculture~~,~~ operation, and must be in accordance with applicable best management practices set forth in either Forestry Best Management Practices for Water Quality in Virginia Technical Guide (Fourth Edition, July 2002) or Virginia Agricultural BMP Manual (2000), which facilitate compliance with the § 404(b)(1) Guidelines (40 CFR Part 230). Activities on areas lying fallow as part of a

conventional rotational cycle are part of an established operation.

b. Activities which bring a new area into agricultural or silvicultural use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If the activity takes place outside surface waters, it does not need a VWP permit, whether or not it is part of an established agriculture or silviculture operation.

c. For the purposes of subdivision ~~7~~ 8 of this section, cultivating, harvesting, minor drainage, plowing, and seeding are defined as follows:

(1) "Cultivating" means physical methods of soil treatment employed within established agriculture and silviculture lands on farm or forest crops to aid and improve their growth, quality, or yield.

(2) "Harvesting" means physical measures employed directly upon farm, forest, or crops within established agricultural and silviculture lands to bring about their removal from farm or forest land, but does not include the construction of farm or forest roads.

(3) "Minor drainage" means:

(a) The discharge of dredged or fill material incidental to connecting upland drainage facilities to surface waters, adequate to effect the removal of excess soil moisture from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops;

(b) The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, or other wetland crop species, where these activities and the discharge occur in surface waters which are in established use for such agricultural and silviculture wetland crop production;

(c) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of the Act, and which are in established use for the production of rice, or other wetland crop species;

(d) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year after such blockages are discovered in order to be eligible for exclusion; and

(e) Minor drainage in surface waters is limited to drainage within areas that are part of an established agriculture or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland (for example, wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to agriculture). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting surface water. Any discharge of dredged or fill material into surface water incidental to the construction of any such structure or waterway requires a VWP permit, unless otherwise excluded or exempted by this regulation.

(4) "Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm or forest land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of surface water to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities does not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

(5) "Seeding" means the sowing of seed and placement of seedlings to produce farm or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

~~8.~~ 9. Maintenance, including emergency reconstruction of recently damaged parts~~,~~ of currently serviceable structures, such as dikes, groins, levees, dams, riprap breakwaters, causeways, bridge abutments or approaches, and transportation and utility structures. Maintenance does not include modifications that change the character, scope, or size of the original design. In order to qualify for this

exclusion, emergency reconstruction must occur within a reasonable period of time after damage occurs.

~~9.~~ 10. Construction or maintenance of farm ponds or impoundments, stock ponds or impoundments, or irrigation ditches, or the maintenance (but not construction) of drainage ditches.

a. The exclusion for the construction and maintenance of farm or stock ponds and farm or stock impoundments applies to those structures that are operated for normal agricultural or silvicultural purposes, and are less than 25 feet in height or create a maximum impoundment capacity smaller than 100 acre-feet.

b. The exclusion for the construction and maintenance of farm or stock ponds and farm or stock impoundments does not include the impacts associated with the withdrawal of surface water from, within, or behind such structures. A VWP permit may be required for the surface water withdrawal.

c. Discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exclusion.

d. The maintenance dredging of existing ditches is included in this exclusion provided that the final dimensions of the maintained ditch do not exceed the average dimensions of the original ditch. This exclusion does not apply to the construction of new ditches or to the channelization of streams.

~~10.~~ 11. Construction of temporary sedimentation basins on a construction site which does not include the placement of fill materials into surface waters or excavation in wetlands. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term "construction site" also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in run-off of sediment is controlled through the use of temporary sedimentation basins.

~~11.~~ 12. Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with applicable best management practices (BMPs) set forth in either Forestry Best Management Practices for Water Quality in Virginia, Technical Guide, Fourth Edition, July 2002, or Virginia Agricultural BMP Manual, 2000, to ensure that flow and circulation patterns and chemical and biological characteristics of surface waters are not impaired, that the reach of such waters is not reduced, and that any adverse effect on the aquatic environment will otherwise be minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:

a. Permanent roads (for agriculture or forestry activities), temporary access roads (for mining, forestry, or farm purposes), and skid trails (for logging) in surface waters shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific agriculture, silviculture or mining operations, and local topographic and climatic conditions;

b. All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into surface waters;

c. The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

d. The fill shall be properly stabilized and maintained to prevent erosion during and following construction;

e. Discharges of dredged or fill material into surface waters to construct road fill shall be made in a manner which minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within state waters (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

f. In designing, constructing, and maintaining roads, vegetative disturbance in surface waters shall be kept to a minimum;

g. The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

h. Borrow material shall be taken from upland sources whenever feasible;

i. The discharge shall not take, or jeopardize the continued existence of a state- or federally-listed threatened or endangered species as defined under the Endangered Species Act (16 USC § 1531 et seq.), in § 29.1-566 of the Code of Virginia and in 4VAC15-20-130 B and C, except as provided in § 29.1-568 of the Code of Virginia, or adversely modify or destroy the critical habitat of such species;

j. Discharges into the nesting and breeding areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

k. The discharge shall not be located in proximity of a public water supply or intake;

l. The discharge shall not occur in areas of concentrated shellfish production;

m. The discharge shall not occur in a component to the National Wild and Scenic River System;

n. The discharge material shall consist of suitable material free from toxic pollutants in toxic amounts; and

o. All temporary fills shall be removed in their entirety and the area restored to its original elevation.

B. The following surface water withdrawals are excluded from VWP permit requirements. Activities, other than the surface water withdrawal, which are contained in 9VAC25-210-50 and are associated with the construction and operation of the surface water withdrawal, are subject to VWP permit requirements unless excluded by subsection A of this section. Other permits under state and federal law may be required.

1. Any surface water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal. To qualify for this exclusion, the surface water withdrawal shall be deemed to be in existence on July 1, 1989, if there was an actual withdrawal on or before that date that has not been abandoned.

a. Abandonment of a surface water withdrawal. A surface water withdrawal shall be deemed to be abandoned if the owner of the withdrawal system (i) notifies the DEQ in writing that the withdrawal has been abandoned or (ii) removes or disables the withdrawal system with the intent to permanently cease such withdrawal. Transfer of ownership or operational control of the withdrawal system, a change in use of the water, or temporary cessation of the withdrawal shall not be deemed evidence of abandonment. The notification shall be signed by the owner of record or shall include evidence satisfactory to the DEQ that the signatory is authorized to submit the notice on behalf of the owner of record. Evidence may include, but shall not be limited to, a resolution of the governing body of the owner or corporate minutes.

b. Information to be furnished to the DEQ. Each owner or operator of a permanent withdrawal system engaging in a withdrawal that is subject to this exclusion shall provide the DEQ the estimated maximum capacity of the intake structure, the location of the existing intake structure and any other information that may be required by the board. Each owner or operator of a temporary withdrawal system engaging in a withdrawal that is subject to this exclusion, where the purpose of the withdrawal is for agriculture, shall provide to the DEQ the maximum annual surface water withdrawal over the last 10 years. The information shall be provided within one year of the date that notice of such request is received from the DEQ and shall be updated when the maximum capacity of the existing intake structure changes. The information provided to the DEQ shall not constitute a limit on the exempted withdrawal. Such information shall be utilized by the DEQ and board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

2. Any surface water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

3. Any existing lawful unpermitted surface water withdrawal initiated between July 1, 1989, and July 25, 2007, which is not subject to other exclusions contained in this section. These withdrawals shall be excluded from permit requirements only if they comply with the conditions in this subdivision. Regardless of complying with the conditions of this subdivision, these withdrawals shall require a permit for any increased withdrawal amount.

a. Information to be furnished to the DEQ. Each owner or operator of a withdrawal system engaging in a withdrawal that is subject to this exclusion shall provide the DEQ with copies of water withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-200) documenting the largest 12-consecutive month withdrawal that occurred in the 10 years prior to July 25, 2007. In the case of unreported agricultural surface water withdrawals, estimates of withdrawals will be accepted that are based on one of the following:

(1) The area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps; number and type of livestock watered annually; number and type of livestock where water is used for cooling purposes; or

(2) Other methods approved by the board for the largest 12 consecutive month withdrawal that occurred in the 10 years prior to July 25, 2007. The board shall evaluate all estimates of surface water withdrawals based on projected water demands for crops and livestock as published by the Virginia Cooperative Extension Service, the United States Natural Resources Conservation Service, or other similar references and make a determination whether they are reasonable. In all cases only reasonable estimates will be used to document the excluded withdrawal amount.

b. The information noted in subdivision 3 a of this subsection shall be provided within 12 months of July 25, 2007. The information provided to the DEQ shall constitute a limit on the withdrawal that is excluded from permit requirements; any increase in that withdrawal

above the limited amount shall require an application for a permit for the withdrawal system. Information regarding excluded withdrawal amounts shall be utilized by the DEQ and board to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

c. All owners and operators of surface water withdrawals excluded from permit requirements by this section shall annually report withdrawals as required by Water Withdrawal Reporting Regulations (9VAC25-200). Failure to file annual reports either reporting actual withdrawals or the fact that withdrawals did not occur may result in the owner or operator being required to file an application and receive a permit prior to resuming any withdrawal.

4. Agricultural surface water withdrawals from nontidal waters that total less than one million gallons in a single month.

5. Surface water withdrawals from nontidal waters for all other purposes that total less than 10,000 gallons per day.

6. Surface water withdrawals from tidal waters for nonconsumptive uses.

7. Agricultural surface water withdrawals from tidal waters that total less than 60 million gallons in a single month.

8. Surface water withdrawals from tidal waters for all other consumptive purposes that total less than two million gallons per day.

9. Surface water withdrawals for firefighting or for the training activities related to firefighting, such as dry hydrants and emergency surface water withdrawals.

10. Surface water withdrawals placed into portable containers by persons owning property on, or holding easements to, riparian lands.

11. Surface water withdrawals for the purposes of hydrostatic pressure testing of water tight containers, pipelines, and vessels.

12. Surface water withdrawals for normal single family home residential gardening, lawn, and landscape maintenance.

13. Surface water withdrawals that are located on a property, such that the withdrawal returns to the stream of origin; not more than half of the instantaneous flow is diverted; not more than 1,000 feet of stream channel separate the withdrawal point from the return point; and both banks of the affected stream segment are located within that property boundary.

14. Surface water withdrawals from quarry pits, such that the withdrawal does not alter the physical, biological, or chemical properties of surface waters connected to the quarry pit.

15. Surface water withdrawals from a privately owned agriculture pond, emergency water storage facility, or other water retention facility, provided that such pond or facility is not placed in the bed of a perennial or intermittent stream or wetland. Surface water withdrawals from such facilities constructed in beds of ephemeral streams are excluded from permit requirements.

C. DEQ may require any owner or operator of a withdrawal system excluded from permit requirements by subdivisions B 3 through 15 of this section to cease withdrawals and file an application and receive a permit prior to resuming any withdrawal when the board's assessment indicates that a withdrawal, whether individually or in combination with other existing or proposed projects:

1. Causes or contributes to, or may reasonably be expected to cause or contribute to, a significant impairment of the state waters or fish and wildlife resources;

2. Adversely impacts other existing beneficial uses; or

3. Will cause or contribute to a violation of water quality standards.

9VAC25-210-130. VWP general permits.

A. The board may issue VWP general permits by regulation for certain specified categories of activities as it deems appropriate.

B. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require individual applications and VWP individual permits rather than approving coverage under a VWP general permit regulation. Cases where an individual VWP permit may be required include the following:

1. Where the activity may be a significant contributor to pollution;

2. Where the applicant or permittee is not in compliance with the conditions of the VWP general permit regulation or authorization;

3. When an applicant or permittee no longer qualifies for coverage under the VWP general permit regulation or authorization; and

4. When a permittee operating under a VWP general permit authorization requests to be excluded from the coverage of the VWP general permit regulation by applying for a VWP individual permit.

C. When a VWP individual permit is issued to a permittee, the applicability of the VWP general permit authorization to the individual permittee is automatically terminated on the effective date of the VWP individual permit.

D. When a VWP general permit regulation is issued which applies to a permittee already covered by a VWP individual permit, such person may request exclusion from the provisions of the VWP general permit regulation and subsequent coverage under a VWP individual permit.

E. A VWP general permit authorization may be revoked from an individual permittee for any of the reasons set forth in 9VAC25-210-180 subject to appropriate opportunity for a hearing.

F. When all permitted activities requiring notification have been completed, the permittee shall be required to submit a notice of termination unless the permittee has previously submitted a termination by consent request for the same permitted activities and such request has been approved by the board.

G. Activities authorized under a VWP general permit regulation shall be authorized for a fixed term based upon project length and duration. When a general permit regulation is amended or replaced, it shall contain provisions such that coverage authorized under the general permit existing as of the effective date of the amended or replacement VWP general permit regulation may continue under the amended or replacement VWP general permit and that all terms and conditions of the authorization may continue in full force and effect. Notwithstanding any other provision, a request for continuation of a VWP general permit authorization beyond the expiration date of such authorization in order to complete monitoring requirements shall not be considered a new application for coverage and no application fee will be charged.

H. The board may certify~~,~~ or certify with conditions~~,~~ a general, regional, or nationwide ~~or regional permit~~ proposed by the USACE in accordance with § 401 of the federal Clean Water Act as meeting the requirements of this regulation and a VWP general permit, provided that the nationwide or regional permit and the certification conditions:

1. Require that wetland or stream impacts be avoided and minimized to the maximum extent practicable;

2. Prohibit impacts that cause or contribute to a significant impairment of state waters or fish and wildlife resources;

3. Require compensatory mitigation sufficient to achieve no net loss of existing wetland acreage and functions or stream functions and water quality benefits; and

4. Require that compensatory mitigation for unavoidable wetland impacts be provided through the following options, as appropriate to replace acreage and function:

a. Wetland creation;

b. Wetland restoration;

c. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia;

d. A contribution to an approved in-lieu fee fund;

e. Preservation of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 4 a, b, or c of this subsection, and when consistent with 9VAC25-210-116 A;

f. Restoration of upland buffers adjacent to state waters, when utilized in conjunction with subdivision 4 a, b, or c of this subsection, and when consistent with 9VAC25-210-116 A;

g. Preservation of wetlands, when utilized in conjunction with subdivision 4 a, b, or c of this subsection.

5. Require that compensatory mitigation for unavoidable stream impacts ~~may~~ be met through the following options as appropriate to replace functions or water quality benefits; one factor in determining the required compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology approved by the board:

a. Stream channel restoration or enhancement;

b. Riparian buffer restoration or enhancement;

c. Riparian buffer preservation, when consistent with 9VAC25-210-116 A;

d. A contribution to an approved in-lieu fee fund;

e. The purchase or use of credits from a mitigation bank, pursuant to § 62.1-44.15:23 of the Code of Virginia.

I. The certifications allowed by subsection H of this section may be provided only after the board has advertised and accepted public comment on its intent to provide certification for at least 30 days.

J. Coverage under a general, regional, or nationwide ~~or regional~~ permit promulgated by the USACE and certified by the board in accordance with this section shall be deemed coverage under a VWP general permit regulation upon submission of proof of coverage under the general, regional, or nationwide ~~or regional permit~~ and any other information required by the board through the certification process. Notwithstanding the provisions of 9VAC25-20-10, no fee shall be required from applicants seeking coverage under this subsection.

9VAC25-210-220. Waiver of VWP permit or § 401 certification.

A. The board may waive permitting requirements when the board determines that a proposed project impacts an isolated wetland that is of minimal ecological value as defined in 9VAC25-210-10. Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.

B. The board may waive the requirement for a VWP individual permit when the proposed activity qualifies for a

permit issued by the USACE and receives a permit from the VMRC or wetlands boards, pursuant to Chapter 12 (§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, and the activity does not impact instream flows.

C. The board shall waive the requirement for a VWP general permit authorization or VWP individual permit when the proposed activity meets the exclusion set forth in 9VAC25-210-60 A 10 a regardless of the issuance of an individual permit by the United States Army Corps of Engineers.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (9VAC25-210)

Permit Application Fee Form (eff. 7/04).

Standard Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia ~~(eff. 10/04)~~ (eff. 07/08).

Joint Permit Application for Projects in Tidewater Virginia (eff. 10/04).

Virginia Department of Transportation, Joint Permit Application, IACM Coordination Form ~~(eff. 10/02)~~ (eff. 6/08).

~~Quarterly~~ Monthly Reporting of Impacts Less than One-Tenth Acre ~~(insert reporting period)~~ Statewide ~~(eff. 4/03)~~ (eff. 8/07).

DEQ Application for New or Expanded Minor Surface Water Withdrawals Initiated On or After July 25, 2007.

VA.R. Doc. No. R09-1411; Filed October 22, 2008, 10:48 a.m.

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: October 22, 2008.

On December 4, 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 North River in Augusta County and a segment of Little Stony Creek in Scott County as exceptional state waters. The proposed amendments were published as a fast-track regulation rulemaking on March 3, 2008, Volume 24, Issue 13 of the Virginia Register and considered approved by the board upon receiving no comment by the conclusion of the comment period on April 2, 2008. The effective date is upon filing the notice of 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 October 9, 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 October 22, 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, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4116, or email dcwhitehurst@deq.virginia.gov.

VA.R. Doc. No. R08-1112; Filed October 22, 2008, 12:33 p.m.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

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: **11VAC10-10. Public Participation Guidelines (repealing 11VAC10-10-10 through 11VAC10-10-70).**

11VAC10-11. Public Participation Guidelines (adding 11VAC10-11-10 through 11VAC10-11-110).

Statutory Authority: §§ 2.2-4007.02 and 59.1-369 of the Code of Virginia.

Effective Date: December 10, 2008.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.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 actions; (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

11VAC10-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Virginia Racing Commission. 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).

11VAC10-11-20. 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 Virginia Racing Commission, 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

11VAC10-11-30. 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.

11VAC10-11-40. 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 11VAC10-11-30, 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 reproposed, 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

11VAC10-11-50. 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 reproposed 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.

11VAC10-11-60. 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.

11VAC10-11-70. 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.

11VAC10-11-80. 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.

11VAC10-11-90. 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.

11VAC10-11-100. 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.

11VAC10-11-110. 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. R09-1448; Filed October 17, 2008, 3:45 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with §2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Board of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-590. Waterworks Regulations (amending 12VAC5-590-10, 12VAC5-590-370, 12VAC5-590-410, 12VAC5-590-420, 12VAC5-590-440, 12VAC5-590-500, 12VAC5-590-530, 12VAC5-590-540, 12VAC5-590-545, 12VAC5-590-550).**

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia.

Effective Date: December 10, 2008.

Agency Contact: Robert A. K. Payne, Compliance Manager, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7498, or email rob.payne@vdh.virginia.gov.

Summary:

The Stage 2 Disinfectants and Disinfection Byproducts Rule will reduce potential cancer and reproductive and developmental health risks from disinfection byproducts in drinking water. These byproducts form when disinfectants are used to control disease-causing organisms.

The Long Term 2 Enhanced Surface Water Treatment Rule will reduce illness linked with Cryptosporidium and other pathogenic microorganisms in drinking water. These additional regulations will supplement existing regulations by targeting additional Cryptosporidium treatment requirements to higher risk waterworks. This addition will help ensure that waterworks maintain microbial protection when they take steps to decrease the formation of disinfection byproducts that result from chemicals commonly used in water treatment.

Part I
General Framework for Waterworks Regulations

Article 1
Definitions

12VAC5-590-10. Definitions.

As used in this chapter, the following words and terms shall have meanings respectively set forth unless the context clearly requires a different meaning:

"Action level" means the concentration of lead or copper in water specified in 12VAC5-590-410 E, which determines, in some cases, the treatment requirements contained in 12VAC5-590-420 C, D, E and F that ~~a waterworks~~ an owner is required to complete.

"Air gap separation" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying pure water to a tank, plumbing fixture, or other device and the rim of the receptacle.

"Annual daily water demand" means the average rate of daily water usage over at least the most recent three-year period.

"Applied water" means water that is ready for filtration.

"Approved" means material, equipment, workmanship, process or method that has been accepted by the ~~division~~ commissioner as suitable for the proposed use.

"Auxiliary water system" means any water system on or available to the premises other than the waterworks. These auxiliary waters may include water from a source such as wells, lakes, or streams; or process fluids; or used water. They may be polluted or contaminated or objectionable, or constitute an unapproved water source or system over which the water purveyor does not have control.

"Backflow" means the flow of water or other liquids, mixtures, or substances into the distribution piping of a waterworks from any source or sources other than its intended source.

"Backflow prevention device" means any approved device, method, or type of construction intended to prevent backflow into a waterworks.

"Bag filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. They are typically constructed of a nonrigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

"Bank filtration" means a water treatment process that uses a well to recover surface water that has naturally infiltrated into groundwater through a river bed or bank(s). Infiltration is

typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

"Best available technology (BAT)" means the best technology, treatment techniques, or other means which the commissioner finds, after examination for efficacy under field conditions and not solely under laboratory conditions and in conformance with applicable EPA regulations, are available (taking cost into consideration).

"Board" means the State Board of Health.

"Breakpoint chlorination" means the addition of chlorine to water until the chlorine demand has been satisfied and further additions result in a residual that is directly proportional to the amount added.

"Cartridge filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

"Chlorine" means dry chlorine.

"Chlorine gas" means dry chlorine in the gaseous state.

"Chlorine solution (chlorine water)" means a solution of chlorine in water. ~~Note: the term chlorine solution is sometimes used to describe hypochlorite solutions. This use of the term is incorrect.~~

"Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into ~~flocs~~ floc.

"Coliform bacteria group" means a group of bacteria predominantly inhabiting the intestines of man or animal but also occasionally found elsewhere. It includes all aerobic and facultative anaerobic, gram-negative, non-sporeforming bacilli that ferment lactose with production of gas. Also included are all bacteria that produce a dark, purplish-green colony with metallic sheen by the membrane filter technique used for coliform identification.

"Combined distribution system" means the interconnected distribution system consisting of the distribution systems of wholesale waterworks and of the consecutive waterworks that receive finished water.

"Commissioner" means the State Health Commissioner.

"Community waterworks" means a waterworks which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Compliance cycle" means the nine-year calendar year cycle during which a waterworks ~~must~~ shall monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1, 2002, and ends December 31, 2010; the third begins January 1, 2011, and ends December 31, 2019.

"Compliance period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; the third from January 1, 1999, to December 31, 2001.

"Comprehensive performance evaluation" ~~(CPE) is~~ or "(CPE)" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operational and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with 12VAC5-590-530 C 1 b (2), the comprehensive performance evaluation ~~must~~ shall consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

"Consecutive waterworks" means a waterworks which has no water production or source facility of its own and which obtains all of its water from another permitted waterworks or receives some or all of its finished water from one or more wholesale waterworks. Delivery may be through a direct connection or through the distribution system of one or more consecutive waterworks.

"Consumer" means any person who drinks water from a waterworks.

"Consumer's water system" means any water system located on the consumer's premises, supplied by or in any manner connected to a waterworks.

"Contaminant" means any objectionable or hazardous physical, chemical, biological, or radiological substance or matter in water.

"Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

"Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

"Cross connection" means any connection or structural arrangement, direct or indirect, to the waterworks whereby backflow can occur.

"CT" or "CT calc" means the product of "residual disinfectant concentration" (C) in mg/L determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T."

"Daily fluid intake" means the daily intake of water for drinking and culinary use and is defined as two liters.

"Dechlorination" means the partial or complete reduction of residual chlorine in water by any chemical or physical process at a waterworks with a treatment facility.

"Degree of hazard" means the level of health hazard, as derived from an evaluation of the potential risk to health and the adverse effect upon the waterworks.

"Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which (i) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and (ii) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

"Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

"Disinfectant" means any oxidant (including chlorine) that is added to water in any part of the treatment or distribution process for the purpose of killing or deactivating pathogenic organisms.

"Disinfectant contact time ("T" in CT calculations)" means the time in minutes that it takes for water to move from the point of disinfectant application to the point where residual disinfectant concentration ("C") is measured.

"Disinfection" means a process ~~which~~ that inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

"Disinfection profile" means a summary of *Giardia lamblia* or virus inactivation through the treatment plant.

"Distribution main" means a water main whose primary purpose is to provide treated water to service connections.

"District Engineer" means the employee assigned by the Commonwealth of Virginia, Department of Health, Office of Drinking Water to manage its regulatory activities in a geographical area of the state consisting of a state planning district or subunit of a state planning district.

"Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a waterworks with more than one service connection that is limited to the specific service connection from which the coliform positive sample was taken.

"Domestic use or usage" means normal family or household use, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Double gate-double check valve assembly" means an approved assembly composed of two single independently acting check valves including tightly closing shutoff valves located at each end of the assembly and petcocks and test gauges for testing the watertightness of each check valve.

"Dual sample set" means a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an initial distribution system evaluation (IDSE) under 12VAC5-590-370 B 3 e (2) and determining compliance with the TTHM and HAA5 MCLs under 12VAC5-590-370 B 3 e (3).

"Effective corrosion inhibitor residual~~,~~" means, for the purpose of 12VAC5-590-420 C 1 only, ~~means~~ a concentration sufficient to form a passivating film on the interior walls of a pipe.

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

"Entry point" means the place where water from the source after application of any treatment is delivered to the distribution system.

"Equivalent residential connection" means a volume of water used equal to a residential connection which is 400 gallons per day unless supportive data indicates otherwise.

"Exception" means an approved deviation from a "shall" criteria contained in Part III (12VAC5-590-640 et seq.) of this chapter.

"Exemption" means a conditional waiver of a specific PMCL or treatment technique requirement which is granted to a specific waterworks for a limited period of time.

"Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"Finished water" means water that is introduced into the distribution system of a waterworks and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

"First draw sample" means a one-liter sample of tap water, collected in accordance with 12VAC5-590-370 B 6 a (2), that has been standing in plumbing pipes at least six hours and is collected without flushing the tap.

"Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

"Flowing stream" means a course of running water flowing in a definite channel.

"Free available chlorine" means that portion of the total residual chlorine remaining in water at the end of a specified contact period which will react chemically and biologically as hypochlorous acid or hypochlorite ion.

"GAC10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with 12VAC5-590-410 C 2 b (1) (b) shall be 120 days.

"GAC20" means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.

"Governmental entity" means the Commonwealth, a town, city, county, service authority, sanitary district or any other governmental body established under the Code of Virginia, including departments, divisions, boards or commissions.

"Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

"Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

"Groundwater" means all water obtained from sources not classified as surface water (or surface water sources).

"Groundwater under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia*, or *Cryptosporidium*. It also means significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH that closely correlate to climatological or surface water conditions. The ~~office~~ commissioner in accordance with 12VAC5-590-430 will determine direct influence of surface water.

"Haloacetic acids (five)" or "(HAA5)" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

"Halogen" means one of the chemical elements chlorine, bromine, fluorine, astatine or iodine.

"Health hazard" means any condition, device, or practice in a waterworks or its operation that creates, or may create, a danger to the health and well-being of the water consumer.

"Health regulations" means regulations which include all primary maximum contaminant levels, treatment technique requirements, and all operational regulations, the violation of which would jeopardize the public health.

"Hypochlorite" means a solution of water and some form of chlorine, usually sodium hypochlorite.

"Initial compliance period" means for all regulated contaminants, the initial compliance period is the first full three-year compliance period beginning at least 18 months after promulgation with the exception of waterworks with 150 or more service connections for contaminants listed at Table 2.3, VOC 19-21; Table 2.3, SOC 19-33; and antimony, beryllium, cyanide (as free cyanide), nickel, and thallium which shall begin January 1993.

"Interchangeable connection" means an arrangement or device that will allow alternate but not simultaneous use of two sources of water.

"Karstian geology" means an area predominantly underlain by limestone, dolomite, or gypsum and characterized by rapid underground drainage. Such areas often feature sinkholes, caverns, and sinking or disappearing creeks. In Virginia, this generally includes all that area west of the Blue Ridge and, in Southwest Virginia, east of the Cumberland Plateau.

"Lake/reservoir" means a natural or man-made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

"Large waterworks~~,~~" means, for the purposes of 12VAC5-590-370 B 6, 12VAC5-590-420 C through F, 12VAC5-590-530 D, and 12VAC5-590-550 D only, ~~means~~ a waterworks that serves more than 50,000 persons.

"Lead free" means the following:

~~when~~ 1. When used with respect to solders and flux refers to solders and flux containing not more than 0.2% lead;

~~when~~ 2. When used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0% lead; ~~and,~~

~~when~~ 3. When used with respect to plumbing fittings and fixtures intended by the plumbing ~~manufacture~~ manufacturer to dispense water for human ingestion refers to fittings and fixtures that are in compliance with standards established in accordance with 42 USC § 300g-6(e).

"Lead service line" means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting ~~which~~ that is connected to such lead line.

"Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

"Liquid chlorine" means a liquefied, compressed chlorine gas as shipped in commerce. ~~Note: The term liquid chlorine is sometimes used to describe a hypochlorite solution often employed for swimming pool sanitation. This use of the term is incorrect.~~

"Locational running annual average" or "LRAA" means the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

"Log inactivation (log removal)" means that a 99% reduction is a 2-log inactivation; a 99.9% reduction is a 3-log inactivation; a 99.99% reduction is a 4-log inactivation.

"Man-made beta particle and photon emitters" means all radionuclides emitting beta particles and/or photons listed in the most current edition of "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," National Bureau of Standards Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

"Maximum daily water demand" means the rate of water usage during the day of maximum water use.

"Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water which is delivered to any user of a waterworks, except in the cases of turbidity and VOCs, where the maximum permissible level is measured at each entry point to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition. MCLs are set as close to the MCLGs as feasible using the best available treatment technology. Maximum contaminant levels may be either "primary" (PMCL), meaning based on health considerations or "secondary" (SMCL) meaning based on aesthetic considerations.

"Maximum residual disinfectant level (MRDL)" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a waterworks is in compliance with the MRDL when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a waterworks is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in Table 2.12, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections.

"Maximum residual disinfectant level goal (MRDLG)" means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

"Maximum total trihalomethane potential (MTP)" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of 25°C or above.

"Medium-size waterworks~~,~~" means, for the purpose of 12VAC5-590-370 B 6, 12VAC5-590-420 C through F, 12VAC5-590-530, and 12VAC5-590-550 D only, ~~means~~ a waterworks that serves greater than 3,300 and less than or equal to 50,000 persons.

"Membrane filtration" means a pressure or vacuum-driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size exclusion mechanism, and that has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

"Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99%

confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

"Most probable number (MPN)" means that number of organisms per unit volume that, in accordance with statistical theory, would be more likely than any other number to yield the observed test result or that would yield the observed test result with the greatest frequency, expressed as density of organisms per 100 milliliters. Results are computed from the number of positive findings of coliform-group organisms resulting from multiple-portion decimal-dilution plantings.

"Noncommunity waterworks" means a waterworks that is not a community waterworks, but operates at least 60 days out of the year.

"Nonpotable water" means water not classified as pure water.

"Nontransient noncommunity waterworks (NTNC)" means a waterworks that is not a community waterworks and that regularly serves at least 25 of the same persons over six months out of the year.

"Office" means the Commonwealth of Virginia, Department of Health, Office of Drinking Water.

"One hundred year flood level" means the flood elevation which will, over a long period of time, be equaled or exceeded on the average once every 100 years.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks.

"Optimal corrosion control treatment" means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the waterworks to violate any other section of this chapter.

"Owner" or "water purveyor" means an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity, or the federal government which supplies or proposes to supply water to any person within this state from or by means of any waterworks (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

"Plant intake" means the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

"Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

"Point-of-entry treatment device (POE)" means a treatment device applied to the water entering a house or building for the purpose of reducing contaminants in the water distributed throughout the house or building.

"Point-of-use treatment device (POU)" means a treatment device applied to a single tap for the purpose of reducing contaminants in the water at that one tap.

"Pollution" means the presence of any foreign substance (chemical, physical, radiological, or biological) in water that tends to degrade its quality so as to constitute an unnecessary risk or impair the usefulness of the water.

"Pollution hazard" means a condition through which an aesthetically objectionable or degrading material may enter the waterworks or a consumer's water system.

"Post-chlorination" means the application of chlorine to water subsequent to treatment.

"Practical quantitation level (PQL)" means the lowest level achievable by good laboratories within specified limits during routine laboratory operating conditions.

"Prechlorination" means the application of chlorine to water prior to filtration.

"Presedimentation" means a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

"Process fluids" means any fluid or solution which may be chemically, biologically, or otherwise contaminated or polluted which would constitute a health, pollutional, or system hazard if introduced into the waterworks. This includes, but is not limited to:

1. Polluted or contaminated water;

2. Process waters;

3. Used waters, originating from the waterworks which may have deteriorated in sanitary quality;

4. Cooling waters;

5. Contaminated natural waters taken from wells, lakes, streams, or irrigation systems;

6. Chemicals in solution or suspension; and

7. Oils, gases, acids, alkalis, and other liquid and gaseous fluid used in industrial or other processes, or for fire fighting purposes.

"Pure water" or "potable water" means water fit for human consumption and domestic use which is sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts for domestic usage in the area served and normally adequate in quantity and quality for the minimum health requirements of the persons served (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Raw water main" means a water main which conveys untreated water from a source to a treatment facility.

"Reduced pressure principle backflow prevention device (RPZ device)" means a device containing a minimum of two independently acting check valves together with an automatically operated pressure differential relief valve located between the two check valves. During normal flow and at the cessation of normal flow, the pressure between these two checks shall be less than the supply pressure. In case of leakage of either check valve, the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure between the check valves at less than the supply pressure. The unit ~~must~~ shall include tightly closing shut-off valves located at each end of the device, and each device shall be fitted with properly located test cocks. These devices ~~must~~ shall be of the approved type.

"REM" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem" (MREM) is 1/1000 of a REM.

"Repeat compliance period" means any subsequent compliance period after the initial compliance period.

"Residual disinfectant concentration ("C" in CT Calculations)" means the concentration of disinfectant measured in mg/L in a representative sample of water.

"Responsible charge" means designation by the owner of any individual to have duty and authority to operate or modify the operation of waterworks processes.

"Sanitary facilities" means piping and fixtures, such as sinks, lavatories, showers, and toilets, supplied with potable water and drained by wastewater piping.

"Sanitary survey" means an investigation of any condition that may affect public health.

"Secondary water source" means any approved water source, other than a waterworks' primary source, connected to or available to that waterworks for emergency or other nonregular use.

"Sedimentation" means a process for removal of solids before filtration by gravity or separation.

"Service connection" means the point of delivery of water to a customer's building service line as follows:

1. If a meter is installed, the service connection is the downstream side of the meter;

2. If a meter is not installed, the service connection is the point of connection to the waterworks;

3. When the water purveyor is also the building owner, the service connection is the entry point to the building.

"Service line sample" means a one-liter sample of water, collected in accordance with 12VAC5-590-370 B 6 a (2) (c), that has been standing for at least six hours in a service line.

"Sewer" means any pipe or conduit used to convey sewage or industrial waste streams.

"Single family structure~~,~~" means, for the purpose of 12VAC5-590-370 B 6 (a) only, ~~means~~ a building constructed as a single-family residence that is currently used as either a residence or a place of business.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 m/h) resulting in substantial particulate removal by physical and biological mechanisms.

"Small waterworks~~,~~" means, for the purpose of 12VAC5-590-370 B 6, 12VAC5-590-420 C through F, 12VAC5-590-530 D and 12VAC5-590-550 D only, ~~means~~ a waterworks that serves 3,300 persons or fewer.

"Standard sample" means that portion of finished drinking water that is examined for the presence of coliform bacteria.

"Surface water" means all water open to the atmosphere and subject to surface runoff.

"SUVA" means specific ultraviolet absorption at 254 nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV_{254}) (in m-1) by its concentration of dissolved organic carbon (DOC) (in mg/L).

"Synthetic organic chemicals (SOC)" means one of the family of organic man-made compounds generally utilized for agriculture or industrial purposes.

"System hazard" means a condition posing an actual, or threat of, damage to the physical properties of the waterworks or a consumer's water system.

"Terminal reservoir" means an impoundment providing end storage of water prior to treatment.

"Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

"Total effective storage volume" means the volume available to store water in distribution reservoirs measured as the difference between the reservoir's overflow elevation and the minimum storage elevation. The minimum storage elevation is that elevation of water in the reservoir that can provide a minimum pressure of 20 psi at a flow as determined in 12VAC5-590-690 C to the highest elevation served within that reservoir's service area under systemwide maximum daily water demand.

"Total organic carbon (TOC)" means total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

"Total trihalomethanes (TTHM)" means the sum of the concentrations of the trihalomethanes expressed in milligrams per liter (mg/L) and rounded to two significant figures. For the purpose of these regulations, the TTHM's shall mean trichloromethane (chloroform), dibromochloromethane, bromodichloromethane, and tribromomethane (bromoform).

"Transmission main" means a water main whose primary purpose is to move significant quantities of treated water among service areas.

"Treatment technique requirement" means a requirement which specifies for a contaminant a specific treatment technique(s) demonstrated to the satisfaction of the division to lead to a reduction in the level of such contaminant sufficient to comply with these regulations.

"Trihalomethane (THM)" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

"Two-stage lime softening" means a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

"Uncovered finished water storage facility" ~~is~~ means a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens (except residual disinfection) and is directly open to the atmosphere.

"Unregulated contaminant (UC)" means a contaminant for which a monitoring requirement has been established, but for which no MCL or treatment technique requirement has been established.

"Used water" means any water supplied by a water purveyor from the waterworks to a consumer's water system after it has passed through the service connection.

~~"Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.~~

"Variance" means a conditional waiver of a specific regulation which is granted to a specific waterworks. A PMCL Variance is a variance to a Primary Maximum Contaminant Level, or a treatment technique requirement. An Operational Variance is a variance to an operational regulation or a Secondary Maximum Contaminant Level. Variances for monitoring, reporting and public notification requirements will not be granted.

"Virus" means a microbe that is infectious to humans by waterborne transmission.

"Volatile synthetic organic chemical (VOC)" means one of the family of manmade organic compounds generally characterized by low molecular weight and rapid vaporization at relatively low temperatures or pressures.

"Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a waterworks which is deficient in treatment, as determined by the commissioner or the State Epidemiologist.

"Water purveyor" (same as owner).

"Water supply" means water that shall have been taken into a waterworks from all wells, streams, springs, lakes, and other bodies of surface waters (natural or impounded), and the tributaries thereto, and all impounded groundwater, but the term "water supply" shall not include any waters above the point of intake of such waterworks (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Water supply main" or "main" means any water supply pipeline that is part of a waterworks distribution system.

"Water Well Completion Report" means a report form published by the State Water Control Board entitled "Water Well Completion Report" which requests specific information pertaining to the ownership, driller, location, geological formations penetrated, water quantity and quality encountered as well as construction of water wells. The form is to be completed by the well driller.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of the year. The term "waterworks" shall include all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Waterworks with a single service connection" means a waterworks which supplies drinking water to consumers via a single service line.

"Wholesale waterworks" means a waterworks that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another waterworks. Delivery may be through a direct connection or through the distribution system of one or more consecutive waterworks.

Article 2
General Information

12VAC5-590-370. Sampling frequency.

The commissioner may exempt consecutive waterworks that obtain potable water from another water system for distribution from all monitoring requirements in this section except for bacteriological (subsection A of this section), disinfectant residuals, byproducts and disinfection byproduct precursors (subdivision B 3 of this section), and lead and copper (subdivision B 6 of this section). The required sampling frequencies are as follows:

A. Bacteriological.

1. The ~~waterworks~~ owner shall collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting report. The report shall be established or approved by the ~~division~~ district engineer after investigation of the source, method of treatment and storage, and protection of the water concerned. The report ~~must~~ shall include, but is not limited to, the following:

a. The frequency of sampling distributed evenly throughout the month/quarter.

b. Distribution map showing the generalized location where specific sampling sites will be selected.

c. Supporting statement explaining how specific individual sites are selected, how sampling will be rotated among the sites, how repeat samples will be collected and other information demonstrating that sampling will be conducted in a manner to comply with this chapter.

d. Adequate sampling points to provide sampling representative of all the conditions in the system.

e. For small systems (less than 3,301 population), sample sites ~~must~~ shall also be identified by address and code number location.

f. Minimum of three sample locations for each sample required monthly so repeat sample locations are previously ascertained as being adequate in number and five customer service connections upstream and downstream. (See Appendix J for an example.)

g. The sampling point required to be repeat sampled shall not be eliminated from future collections based on a history of questionable water quality unless the sampling point is unacceptable as determined by the ~~division~~ district engineer.

2. The minimum number of bacteriological samples for total coliform evaluation to be collected and analyzed monthly from the distribution system of a community or nontransient noncommunity waterworks shall be in accordance with Table 2.1. ~~All~~ Owners of all noncommunity waterworks that use a surface water source or a groundwater source under the direct influence of surface water, and ~~all~~ large noncommunity (serving 1,000 or more persons per day) waterworks, shall collect and submit samples monthly for analysis in accordance with Table 2.1. ~~All~~ Owners of all other noncommunity waterworks shall submit samples for analysis each calendar quarter in accordance with Table 2.1.

3. The samples shall be taken at reasonably evenly spaced time intervals throughout the month or quarter.

If the results of a sanitary survey or other factors determine that some other frequency is more appropriate than that stated above, a modified sampling program report may be required. The altered frequency shall be confirmed or changed on the basis of subsequent surveys.

TABLE 2.1

POPULATION SERVED PER DAY	MINIMUM NUMBER OF SAMPLES ~~(See 12VAC5-590-370 A 2)~~ (See subdivision A 2 of this section)
25 to 1,000	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 12,900	10
12,901 to 17,200	15
17,201 to 21,500	20
21,501 to 25,000	25
25,001 to 33,000	30
33,001 to 41,000	40
41,001 to 50,000	50

50,001 to 59,000	60
59,001 to 70,000	70
70,001 to 83,000	80
83,001 to 96,000	90
96,001 to 130,000	100
130,001 to 220,000	120
220,001 to 320,000	150
320,001 to 450,000	180
450,001 to 600,000	210
600,001 to 780,000	240
780,001 to 970,000	270
970,001 to 1,230,000	300
1,230,001 to 1,520,000	330
1,520,001 to 1,850,000	360
1,850,001 to 2,270,000	390

4. All bacteriological analyses shall be performed in accordance with 12VAC5-590-440 by the DCLS or by a laboratory certified by DCLS for drinking water samples.

B. Chemical. The location of sampling points, the chemicals measured, the frequency, and the timing of sampling within each compliance period shall be established or approved by the commissioner at the time of issuance of a waterworks operation permit. The commissioner may increase required monitoring where necessary to detect variations within the waterworks. Analysis of field composite samples shall not be allowed. Samples for contaminants that may exhibit seasonal variations shall be collected during the period of the year when contamination is most likely to occur. Failure to comply with the sampling schedules in this section ~~will~~ shall require public notification pursuant to 12VAC5-590-540.

Any other dates contained in this chapter notwithstanding, all waterworks shall comply with all applicable PMCLs listed in Tables 2.2 and 2.3.

Design criteria for new or modified waterworks or ~~waterworks~~ owners developing new sources of supply are found in 12VAC5-590-820, 12VAC5-590-830 and 12VAC5-590-840.

1. Inorganic chemical. Community and nontransient noncommunity waterworks owners shall conduct monitoring to determine compliance with the MCLs in Table 2.2 in accordance with this section. All other noncommunity waterworks owners shall conduct monitoring to determine compliance with the nitrate and nitrite PMCLs in Table 2.2 (as appropriate) in accordance with this section. Monitoring shall be conducted as follows:

a. The owner of any groundwater source waterworks with 150 or more service connections shall take a minimum of one sample at each entry point to the distribution system which is representative of each source, after treatment, unless a change in condition makes another sampling point more representative of each source or treatment plant (hereafter called a sampling point) starting in the compliance period beginning January 1, 1993. The owner of any groundwater source waterworks with fewer than 150 service connections shall take a minimum of one sample at each sampling point for asbestos, barium, cadmium, chromium, fluoride, mercury, nitrate, nitrite, and selenium in the compliance period beginning January 1, 1993, for antimony, beryllium, cyanide (as free cyanide), nickel, and thallium in the compliance period beginning January 1, 1996, and for arsenic (for community and nontransient noncommunity waterworks) in compliance with ~~12VAC5-590-370 B 1 d (6) (b)~~ subdivision B 1 d (6) (b) of this section.

b. The owner of any waterworks which uses a surface water source in whole or in part with 150 or more service connections shall take a minimum of one sample at each entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source, after treatment, unless a change in conditions makes another sampling point more representative of each source or treatment plant (hereafter called a sampling point) beginning January 1, 1993. The owner of any waterworks which use a surface water source in whole or in part with fewer than 150 service connections shall take a minimum of one sample at each sampling point for asbestos, barium, cadmium, chromium, fluoride, mercury, nitrate, nitrite, and selenium beginning January 1, 1993, for antimony, beryllium, cyanide (as free cyanide), nickel, and thallium beginning January 1, 1996, and for arsenic (for community and nontransient noncommunity waterworks) in compliance with ~~12VAC5-590-370 B 1 d (6) (a)~~ subdivision B 1 d (6) (a) of this section.

c. If a waterworks draws water from more than one source and the sources are combined before distribution, the ~~waterworks~~ owner shall sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

d. The frequency of monitoring for asbestos shall be in accordance with subdivision B 1 d (1) of this section; the frequency of monitoring for barium, cadmium, chromium, fluoride, mercury, and selenium shall be in accordance with subdivision B 1 d (2) of this section; the

frequency of monitoring for antimony, beryllium, cyanide (as free cyanide), nickel, and thallium shall be in accordance with subdivision B 1 d (3) of this section; the frequency of monitoring for nitrate shall be in accordance with subdivision B 1 d (4) of this section; the frequency of monitoring for nitrite shall be in accordance with subdivision B 1 d (5) of this section; and the frequency of monitoring for arsenic shall be in accordance with subdivision B 1 d (6) of this section.

(1) The frequency of monitoring conducted to determine compliance with the PMCL for asbestos specified in Table 2.2 shall be conducted as follows:

(a) The owner of each community and nontransient noncommunity waterworks is required to monitor for asbestos during the first three-year compliance period of each nine-year compliance cycle beginning in the compliance period starting January 1, 1993.

(b) If the ~~waterworks~~ owner believes the waterworks is not vulnerable to either asbestos contamination in its source water or due to corrosion of asbestos-cement pipe, or both, the owner may apply to the commissioner for a waiver of the monitoring requirement in subdivision B 1 d (1) (a) of this section. If the commissioner grants the waiver, the ~~waterworks~~ owner is not required to monitor.

(c) The commissioner may grant a waiver based on a consideration of the following factors:

(i) Potential asbestos contamination of the water source; and

(ii) The use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.

(d) A waiver remains in effect until the completion of the three-year compliance period. ~~Waterworks~~ The owner of a waterworks not receiving a waiver shall monitor in accordance with the provisions of subdivision B 1 d (1) (a) of this section.

(e) The owner of a waterworks vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(f) The owner of a waterworks vulnerable to asbestos contamination due solely to source water shall monitor sampling points in accordance with subdivision B 1 of this section.

(g) The owner of a waterworks vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(h) The owner of a waterworks which exceeds the PMCL as determined in 12VAC5-590-410 B 1 shall monitor quarterly beginning in the next quarter after the exceedance occurred.

(i) The commissioner may decrease the quarterly monitoring requirement to the frequency specified in subdivision B 1 d (1) (a) of this section provided the commissioner has determined that the waterworks is reliably and consistently below the PMCL. In no case can the commissioner make this determination unless the owner of a groundwater source waterworks takes a minimum of two quarterly samples or the owner of a waterworks which uses a surface water source in whole or in part takes a minimum of four quarterly samples.

(j) If monitoring data collected after January 1, 1990, are generally consistent with the requirements of subdivision B 1 d (1) of this section, then the commissioner may allow ~~waterworks~~ an owner to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

(2) The frequency of monitoring conducted to determine compliance with the MCLs in Table 2.2 for barium, cadmium, chromium, fluoride, mercury, and selenium shall be as follows:

(a) The owner of a groundwater source waterworks shall take one sample at each sampling point during each compliance period beginning in the compliance period starting January 1, 1993.

(b) The owner of a waterworks which uses a surface water source in whole or in part shall take one sample annually at each sampling point beginning January 1, 1993.

(c) ~~A waterworks~~ An owner may apply to the commissioner for a waiver from the monitoring frequencies specified in subdivision B 1 d (2) (a) or (b) of this section.

(d) A condition of the waiver shall require that the ~~waterworks~~ owner shall take a minimum of one sample while the waiver is effective. The term during which the waiver is effective shall not exceed one compliance cycle (i.e., nine years).

(e) The commissioner may grant a waiver provided the owner of a waterworks ~~which~~ that uses a surface water source in whole or in part has monitored annually for at least three years and groundwater waterworks have conducted a minimum of three rounds of monitoring. (At least one sample shall have been taken since January 1, 1990.) The owner of any waterworks which uses a surface water source in whole or in part or a groundwater source waterworks shall demonstrate that all previous analytical results were less than the PMCL. Waterworks

that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed.

(f) In determining the appropriate reduced monitoring frequency, the commissioner shall consider:

(i) Reported concentrations from all previous monitoring;

(ii) The degree of variation in reported concentrations; and

(iii) Other factors ~~which~~ that may affect contaminant concentrations such as changes in groundwater pumping rates, changes in the waterworks configuration, changes in the waterworks operating procedures, or changes in stream flows or characteristics.

(g) A decision by the commissioner to grant a waiver shall be made in writing and shall set forth the basis for the determination. The request for a waiver may be initiated by the commissioner or upon an application by the ~~waterworks~~ owner. The owner shall specify the basis for the request. The commissioner shall review and, where appropriate, revise the determination of the appropriate monitoring frequency when the ~~waterworks~~ owner submits new monitoring data or when other data relevant to the waterworks appropriate monitoring frequency become available.

(h) Owners of waterworks ~~which~~ that exceed the PMCLs as calculated in 12VAC5-590-410 shall monitor quarterly beginning in the next quarter after the exceedance occurred.

(i) The commissioner may decrease the quarterly monitoring requirement to the frequencies specified in subdivision B 2 d (2) (a), (b) or (c) of this section provided a determination has been made that the waterworks is reliably and consistently below the PMCL. In no case can the commissioner make this determination unless the owner of a groundwater source waterworks takes a minimum of two quarterly samples or the owner of a waterworks which uses a surface water source in whole or in part takes a minimum of four quarterly samples.

(3) The frequency of monitoring conducted to determine compliance with the PMCLs in Table 2.2 for antimony, beryllium, cyanide (as free cyanide), nickel, and thallium shall be as follows:

(a) The owner of a groundwater source waterworks with 150 or more service connections shall take one sample at each sampling point during each compliance period beginning in the compliance period starting January 1, 1993. The owner of a groundwater source waterworks with fewer than 150 service connections shall take one sample at each sampling point during each compliance period beginning in the compliance period starting January 1, 1996.

(b) The owner of a waterworks ~~which~~ that uses a surface water source in whole or in part with 150 or more service connections shall take one sample annually at each sampling point beginning January 1, 1993. The owner of a waterworks ~~which~~ that uses a surface water source in whole or in part with fewer than 150 service connections shall take one sample annually at each sampling point beginning January 1, 1996.

(c) ~~A waterworks~~ An owner may apply to the commissioner for a waiver from the monitoring frequencies specified in subdivision B 2 d (3) (a) or (b) of this section.

(d) A condition of the waiver shall require that the ~~waterworks~~ owner ~~shall~~ take a minimum of one sample while the waiver is effective. The term during which the waiver is effective shall not exceed one compliance cycle (i.e., nine years).

(e) The commissioner may grant a waiver provided the owner of a waterworks ~~which~~ that uses a surface water source in whole or in part has monitored annually for at least three years and groundwater waterworks have conducted a minimum of three rounds of monitoring. (At least one sample shall have been taken since January 1, 1990.) The owner of any waterworks which uses a surface water source in whole or in part or a groundwater source waterworks shall demonstrate that all previous analytical results were less than the PMCL. Waterworks that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed.

(f) In determining the appropriate reduced monitoring frequency, the commissioner shall consider:

(i) Reported concentrations from all previous monitoring;

(ii) The degree of variation in reported concentrations; and

(iii) Other factors which may affect contaminant concentrations such as changes in groundwater pumping rates, changes in the waterworks configuration, changes in the waterworks operating procedures, or changes in stream flows or characteristics.

(g) A decision by the commissioner to grant a waiver shall be made in writing and shall set forth the basis for the determination. The request for a waiver may be initiated by the commissioner or upon an application by the ~~waterworks~~ owner. The owner shall specify the basis for the request. The commissioner shall review and, where appropriate, revise the determination of the appropriate monitoring frequency when the ~~waterworks~~ owner submits new monitoring data or when other data

relevant to the waterworks appropriate monitoring frequency become available.

(h) Owners of waterworks ~~which~~ that exceed the PMCLs as calculated in 12VAC5-590-410 shall monitor quarterly beginning in the next quarter after the exceedance occurred.

(i) The commissioner may decrease the quarterly monitoring requirement to the frequencies specified in subdivision B 2 d (3) (a), (b) or (c) of this section provided a determination has been made that the waterworks is reliably and consistently below the PMCL. In no case ~~can~~ shall the commissioner make this determination unless the owner of a groundwater source waterworks takes a minimum of two quarterly samples or the owner of a waterworks which uses a surface water source in whole or in part takes a minimum of four quarterly samples.

(4) All community, nontransient noncommunity and noncommunity waterworks owners shall monitor to determine compliance with the PMCL for nitrate in Table 2.2.

(a) Owners of community and nontransient noncommunity waterworks ~~which~~ that use a groundwater source shall monitor annually beginning January 1, 1993.

(b) Owners of community and nontransient noncommunity waterworks ~~which~~ that use a surface water source in whole or in part shall monitor quarterly beginning January 1, 1993.

(c) For owners of community and nontransient noncommunity waterworks ~~which~~ that use groundwater, the repeat monitoring frequency shall be quarterly for at least one year following any one sample in which the concentration is ~~≥50%~~ greater than 50% of the PMCL. The commissioner may allow the owner of a waterworks, ~~which~~ that uses groundwater, to reduce the sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than the PMCL.

(d) For community and nontransient noncommunity waterworks, the commissioner may allow the owner of a waterworks ~~which~~ that uses a surface water source in whole or in part, to reduce the sampling frequency to annually if all analytical results from four consecutive quarters are ~~<50%~~ less than 50% of the PMCL. Such waterworks shall return to quarterly monitoring if any one sample is ~~≥~~50% greater than or equal to 50% of the PMCL.

(e) The owners of all other noncommunity waterworks shall monitor annually beginning January 1, 1993.

(f) After the initial round of quarterly sampling is completed, the owner of each community and nontransient noncommunity waterworks ~~which~~ that is monitoring annually shall take subsequent samples during the quarter(s) which previously resulted in the highest analytical result.

(5) All ~~community, nontransient noncommunity and noncommunity waterworks~~ owners shall monitor to determine compliance with the PMCL for nitrite in Table 2.2.

(a) All ~~waterworks~~ owners shall take one sample at each sampling point in the compliance period beginning January 1, 1993.

(b) After the initial sample, the owner of any waterworks where an analytical result for nitrite is ~~<50%~~ less than 50% of the PMCL shall monitor at the frequency specified by the commissioner.

(c) The repeat monitoring frequency for any ~~waterworks~~ owner shall be quarterly for at least one year following any one sample in which the concentration is ~~≥50%~~greater than 50% of the PMCL. The commissioner may allow ~~a waterworks~~ an owner to reduce the sampling frequency to annually after determining the analysis results are reliably and consistently less than the PMCL.

(d) Owners of waterworks which are monitoring annually shall take each subsequent sample during the quarter(s) which previously resulted in the highest analytical result.

(6) The frequency of monitoring conducted to determine compliance with the PMCLs in Table 2.2 for arsenic shall be as follows:

(a) The owner of each community and nontransient noncommunity waterworks that ~~use~~ uses a surface water source in whole or in part shall take one sample annually at each sampling point beginning January 23, 2006.

(b) The owner of each community and nontransient noncommunity groundwater source waterworks shall take one sample at each entry point during each compliance period starting January 23, 2006.

(c) Owners of waterworks that exceed the PMCL, as calculated in 12VAC5-590-410, shall monitor quarterly beginning in the next quarter after the exceedance has occurred.

(d) The commissioner may decrease the quarterly monitoring requirement to the frequencies specified in subdivision B ~~2~~ 1 d (6) (a) or (b) of this section provided a determination has been made that the waterworks is reliably and consistently below the PMCL. In no case can the commissioner make this determination unless the owner of a groundwater source waterworks takes a minimum of two quarterly samples or the owner of a waterworks that uses a surface water source in whole or in part takes a minimum of four quarterly samples.

(e) No waivers shall be granted by the commissioner for arsenic.

2. Organic chemicals. Owners of all community and nontransient noncommunity waterworks shall sample for organic chemicals in accordance with their water source. Where two or more sources are combined before distribution, the ~~waterworks~~ owner shall sample at the entry point for the combined sources during periods of normal operating conditions.

a. Owners of waterworks that use groundwater shall take a minimum of one sample at each entry point to the distribution system which is representative of each source, after treatment (hereafter called a sampling point).

b. Owners of waterworks that use a surface water source in whole or in part shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system, after treatment (hereafter called a sampling point).

c. The owner of each community and nontransient noncommunity waterworks shall take four consecutive quarterly samples for each contaminant listed in Table 2.3-VOC 2 through 21 and SOC during each compliance period, beginning in the compliance period starting January 1, 1993.

d. Reduced monitoring.

(1) VOC.

(a) If the initial monitoring for contaminants listed in Table 2.3-VOC 1 through 8 and the monitoring for the contaminants listed in Table 2.3-VOC 9 through 21 as allowed in subdivision B 2 d (1) (c) of this section has been completed by December 31, 1992, and the waterworks did not detect any contaminant listed in Table 2.3-VOC 1 through 21, then the owner of each groundwater waterworks and waterworks ~~which~~ that use a surface water source in whole or in part shall take one sample annually beginning January 1, 1993.

(b) After a minimum of three years of annual sampling, the commissioner may allow the owner of a groundwater waterworks with no previous detection of any contaminant listed in Table 2.3-VOC 2 through 21 to take one sample during each compliance period.

(c) The commissioner may allow the use of monitoring data collected after January 1, 1988, for purposes of initial monitoring compliance. If the data are generally consistent with the other requirements in this section, the commissioner may use these data (i.e., a single sample rather than four quarterly samples) to satisfy the initial monitoring requirement of subdivision B 2 c of this section. ~~Waterworks which~~ Owners of waterworks that use grandfathered samples and did not detect any contaminants listed in Table 2.3-VOC, 2 through 21, shall begin monitoring annually in accordance with subdivision B 2 d (1) (a) of this section beginning January 1, 1993.

(2) SOC.

(a) ~~Waterworks~~ Owners of waterworks serving more than 3,300 persons ~~which~~ that do not detect a contaminant listed in Table 2.3-SOC in the initial compliance period, may reduce the sampling frequency to a minimum of two quarterly samples in one year during each repeat compliance period.

(b) ~~Waterworks~~ Owners of waterworks serving less than or equal to 3,300 persons ~~which~~ that do not detect a contaminant listed in Table 2.3-SOC in the initial compliance period may reduce the sampling frequency to a minimum of one sample during each repeat compliance period.

e. Waiver application.

(1) For VOCs. The owner of any community and nontransient noncommunity groundwater waterworks which does not detect a contaminant listed in Table 2.3-VOC may apply to the commissioner for a waiver from the requirements of subdivisions B 2 d (1) (a) and (b) of this section after completing the initial monitoring. A waiver shall be effective for no more than six years (two compliance periods). The commissioner may also issue waivers to small systems for the initial round of monitoring for 1,2,4-trichlorobenzene.

(2) For SOCs. The owner of any community and nontransient noncommunity waterworks may apply to the commissioner for a waiver from the requirement of subdivisions B 2 c and d (2) of this section. The ~~waterworks~~ owner shall reapply for a waiver for each compliance period.

f. The commissioner may grant a waiver after evaluating the following factors: Knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the source. If a determination by the commissioner reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted.

(1) Previous analytical results.

(2) The proximity of the waterworks to a potential point or nonpoint source of contamination. Point sources include spills and leaks of chemicals at or near a waterworks or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste

landfills and other waste handling or treatment facilities. Nonpoint sources for SOCs include the use of pesticides to control insect and weed pests on agricultural areas, forest lands, home and gardens, and other land application uses.

(3) The environmental persistence and transport of the contaminants listed in Table 2.3 VOC and SOC.

(4) How well the water source is protected against contamination, such as whether it is a waterworks ~~which~~ that uses a surface water source in whole or in part or whether it is a groundwater source waterworks. Groundwater source waterworks shall consider factors such as depth of the well, the type of soil, wellhead protection, and well structure integrity. ~~Waterworks which~~ Owners of waterworks that use surface water in whole or in part shall consider watershed protection.

(5) Special factors.

(a) For VOCs. The number of persons served by the waterworks and the proximity of a smaller waterworks to a larger waterworks.

(b) For SOCs. Elevated nitrate levels at the waterworks supply source.

(c) For SOCs. Use of PCBs in equipment used in the production, storage, or distribution of water (i.e., PCBs used in pumps, transformers, etc.).

g. Condition for waivers.

(1) As a condition of the VOC waiver the owner of a groundwater waterworks shall take one sample at each sampling point during the time the waiver is effective (i.e., one sample during two compliance periods or six years) and update its vulnerability assessment considering the factors listed in subdivision B 2 f of this section. Based on this vulnerability assessment the commissioner shall reconfirm that the waterworks ~~owner~~ is nonvulnerable. If the commissioner does not make this reconfirmation within three years of the initial determination, then the waiver is invalidated and the ~~waterworks~~ owner is required to sample annually as specified in subdivision B 2 d (1) (a) of this section.

(2) The owner of any community and nontransient noncommunity waterworks ~~which~~ that use surface water in whole or in part which does not detect a contaminant listed in Table 2.3-VOC may apply to the commissioner for a waiver from the requirements of subdivision B 2 d (1) (a) of this section after completing the initial monitoring. Waterworks meeting ~~this~~ these criteria shall be determined by the commissioner to be nonvulnerable based on a vulnerability assessment during each compliance period. Each ~~waterworks~~ owner receiving a waiver shall sample at the frequency specified by the commissioner (if any).

(3) There are no conditions to SOC waivers.

h. If a contaminant listed in Table 2.3-VOC 2 through 21 or SOC 1 through 33 is detected then (NOTE: Detection occurs when a contaminant level exceeds the current detection limit as defined by EPA.):

(1) Each ~~waterworks~~ owner shall monitor quarterly at each sampling point which resulted in a detection.

(2) The commissioner may decrease the quarterly monitoring requirement specified in subdivision B 2 h (1) of this section provided it has determined that the waterworks is reliably and consistently below the PMCL. In no case shall the commissioner make this determination unless the owner of a groundwater waterworks takes a minimum of two quarterly samples and the owner of a waterworks ~~which~~ that use surface water in whole or in part takes a minimum of four quarterly samples.

(3) If the commissioner determines that the waterworks is reliably and consistently below the PMCL, the commissioner may allow the waterworks to monitor annually. ~~Waterworks which~~ Owners of waterworks that monitor annually shall monitor during the quarter(s) ~~which~~ that previously yielded the highest analytical result.

(4) ~~Waterworks which~~ Owners of waterworks that have three consecutive annual samples with no detection of a contaminant may apply to the commissioner for a waiver for VOC as specified in subdivision B 2 e (1) or to SOC as specified in subdivision B 2 e (2) of this section.

(5) Subsequent monitoring due to contaminant detection.

(a) ~~Groundwater~~ Owners of groundwater waterworks ~~which~~ that have detected one or more of the following two-carbon organic compounds: trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one or more of the two-carbon organic compounds was detected. If the results of the first analysis do not detect vinyl chloride, the commissioner may reduce the quarterly monitoring frequency of vinyl chloride monitoring to one sample during each compliance period. ~~Waterworks which~~ Owners of waterworks that use surface water in whole or in part are required to monitor for vinyl chloride as specified by the commissioner.

(b) If monitoring results in detection of one or more of certain related contaminants (heptachlor and heptachlor epoxide), then subsequent monitoring shall analyze for all related contaminants.

i. ~~Waterworks which~~ Owners of waterworks that violate the requirements of Table 2.3 for VOCs or SOCs, as determined by 12VAC5-590-410 C, shall monitor quarterly. After a minimum of four consecutive quarterly samples ~~which~~ that show the waterworks is in compliance as specified in 12VAC5-590-410 C and the commissioner determines that the waterworks is reliably and consistently below the PMCL, the ~~waterworks~~ owner may monitor at the frequency and time specified in subdivision B 2 h (3) of this section.

3. Disinfectant residuals, disinfection byproducts and disinfection byproduct precursors.

a. Unless otherwise noted, owners of all waterworks that use a chemical disinfectant ~~must~~ shall comply with the requirements of this section as follows:

(1) ~~Community~~ Owners of community or nontransient noncommunity waterworks that use surface water or groundwater under the direct influence of surface water and serving 10,000 or more persons ~~must~~ shall comply with this section beginning January 1, 2002.

(2) ~~Community~~ Owners of community or nontransient noncommunity waterworks that use surface water or groundwater under the direct influence of surface water serving fewer than 10,000 persons and waterworks using only groundwater not under the direct influence of surface water ~~must~~ shall comply with this section beginning January 1, 2004.

(3) ~~Transient~~ Owners of transient noncommunity waterworks ~~which~~ that use surface water or groundwater under the direct influence of surface water and serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant ~~must~~ shall comply with any requirements for chlorine dioxide in this section beginning January 1, 2002.

(4) ~~Transient~~ Owners of transient noncommunity waterworks ~~which~~ that use surface water or groundwater under the direct influence of surface water serving fewer than 10,000 persons and using chlorine dioxide as a disinfectant or oxidant and waterworks using only groundwater not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant ~~must~~ shall comply with any requirements for chlorine dioxide in this section beginning January 1, 2004.

b. ~~Waterworks must~~ Owners shall take all samples during normal operating conditions.

(1) Analysis under this section for disinfection byproducts (TTHM, HAA5, chlorite and bromate) ~~must~~ shall be conducted by a laboratory that has received certification by EPA or the state except as noted in subdivision B 3 b (2) of this section.

(2) Measurement under this section of daily chlorite samples at the entry point to the distribution system, disinfection residuals (free chlorine, combined chlorine, total chlorine and chlorine dioxide), alkalinity, bromide, TOC, SUVA (DOC and UV_{254}), ~~and~~ pH ~~must~~ and magnesium shall be made by a party approved by the commissioner.

(3) DPD colorimetric test kits may be used to measure residual disinfectant concentrations for chlorine, chloramines and chlorine dioxide.

c. Failure to monitor in accordance with the monitoring plan required under subdivision B 3 j of this section is a monitoring violation. Failure to monitor ~~will~~ shall be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the ~~waterworks'~~ owner's failure to monitor makes it impossible to determine compliance with PMCLs or MRDLs.

d. ~~Waterworks~~ Owners may use only data collected under the provisions of this section or the US EPA Information Collection Rule, 40 CFR Part 141 Subpart M, Information Collection Requirements (ICR) for Public Water Systems, to qualify for reduced monitoring.

e. TTHM/HAA5 monitoring. ~~Community~~ Owners of community or nontransient noncommunity waterworks ~~must~~ shall monitor TTHM and HAA5 at the frequency indicated below, unless otherwise indicated:

(1) ~~Routine~~ Running annual average monitoring requirements.

(a) Routine monitoring requirements:

~~Waterworks~~ (i) Owners of waterworks using surface water or groundwater under the direct influence of surface water and serving at least 10,000 persons ~~must~~ shall collect four water samples per quarter per treatment plant. At least 25% of all samples collected each quarter ~~must~~ shall be at locations representing maximum residence time in the distribution system. The remaining samples ~~must~~ shall be taken at locations representative of at least average residence time in the distribution system and representative of the entire distribution system. When setting the sample locations the waterworks ~~must~~ shall take into account number of persons served, different sources of water, and different treatment methods.

~~(b) Waterworks~~ (ii) Owners of waterworks using surface water or groundwater under the direct influence of surface water and serving from 500 to 9,999 persons ~~must~~ shall collect one sample per quarter per treatment plant. The sample location ~~must~~ shall represent maximum residence time in the distribution system.

~~(c) Waterworks~~ (iii) Owners of waterworks using surface water or groundwater under the direct influence of surface water and serving fewer than 500 persons ~~must~~ shall collect one sample per year per treatment plant during the month of warmest water temperature. The sample location ~~must~~ shall represent maximum residence time in the distribution system. If the sample (or average of annual samples, if more than one sample is taken) exceeds PMCL in Table 2.13, the ~~waterworks must~~ owner shall increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until waterworks meets reduced monitoring criteria.

~~(d) Waterworks~~ (iv) Owners of waterworks using only groundwater not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons ~~must~~ shall collect one sample per quarter per treatment plant. The sample location ~~must~~ shall represent maximum residence time in the distribution system.

~~(e) Waterworks~~ (v) Owners of waterworks using only groundwater not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons ~~must~~ shall collect one sample per year per treatment plant during the month of warmest water temperature. The sample location ~~must~~ shall represent maximum residence time in the distribution system. If the sample (or average of annual samples, if more than one sample is taken) exceeds PMCL in Table 2.13, the ~~waterworks must~~ owner shall increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the waterworks meets the criteria for reduced monitoring found in subdivision ~~B 3 e (4)~~ B 3 e (1) (d) of this section.

~~(f)~~ (vi) If ~~a waterworks~~ an owner elects to sample more frequently than the minimum required, at least 25% of all samples collected each quarter (including those taken in excess of the required frequency) ~~must~~ shall be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples ~~must~~ shall be taken at locations representative of at least average residence time in the distribution system.

~~(g)~~ (vii) With prior approval of the commissioner, owners of waterworks that utilize multiple wells from a common aquifer may consider these multiple sources as one treatment plant for determining the minimum number of samples to be collected for TTHM and HAA5 analysis.

~~(2)~~ (b) After one year of routine monitoring ~~a waterworks~~ an owner may reduce monitoring, except as otherwise provided, as follows:

~~(a) Waterworks~~ (i) Owners of waterworks using surface water or groundwater under the direct influence of surface water and serving at least 10,000 persons that has a source water annual average TOC level, before any treatment, of equal to or less than 4.0 mg/L and a TTHM annual average equal to or less than 0.040 mg/L and HAA5 annual average equal to or less than 0.030 mg/L may reduce its monitoring to one sample per treatment plant per quarter at a distribution system location reflecting maximum residence time.

~~(b) Waterworks~~ (ii) Owners of waterworks using surface water or groundwater under the direct influence of surface water serving from 500 to 9,999 persons that has a source water annual average TOC level, before any treatment, equal to or less than 4.0 mg/L and a TTHM annual average equal to or less than 0.040 mg/L and HAA5 annual average equal to or less than 0.030 mg/L may reduce its monitoring to one sample per treatment plant per year at a distribution system location reflecting maximum residence time during the month of warmest water temperature.

~~(c) Waterworks~~ (iii) Owners of waterworks using only groundwater not under the direct influence of surface water, using chemical disinfectant and serving at least 10,000 persons that has a TTHM annual average of equal to or less than 0.040 mg/L and HAA5 annual average of equal to or less than 0.030 mg/L may reduce its monitoring to one sample per treatment plant per year at a distribution system location reflecting maximum residence time during the month of warmest water temperature.

~~(d) Waterworks~~ (iv) Owners of waterworks using only groundwater not under the direct influence of surface water, using chemical disinfectant and serving fewer than 10,000 persons that has a TTHM annual average equal to or less than 0.040 mg/L and HAA5 annual average equal to or less than 0.030 mg/L for two consecutive years or TTHM annual average equal to or less than 0.020 mg/L and HAA5 annual average of equal to or less than 0.015 mg/L for one year may reduce its monitoring to one sample per treatment plant per three-year monitoring cycle at a distribution system location reflecting maximum residence time during the month of warmest water temperature, with the three-year cycle beginning on January 1 following the quarter in which the system qualifies for reduced monitoring.

~~(e) Waterworks~~ (v) Owners of waterworks using surface water or groundwater under the direct influence of surface water serving fewer than 500 persons may not reduce its monitoring to less than one sample per treatment plant per year.

(vi) In order to qualify for reduced monitoring for TTHM and HAA5 under subdivision B 3 e (1) (b) (i) through

(iv) of this section, owners of waterworks using surface water or groundwater under the direct influence of surface water not monitoring under the provisions of subdivision B 3 (i) shall take monthly TOC samples every 30 days at a location prior to any treatment, beginning April 1, 2008. In addition to meeting other criteria for reduced monitoring in subdivision B 3 e (1) (b) (i) through (iv) of this section, the source water TOC running annual average shall be less than or equal to 4.0 mg/L (based on the most recent four quarters of monitoring) on a continuing basis at each treatment plant to reduce or remain on reduced monitoring for TTHM and HAA5. Once qualified for reduced monitoring for TTHM and HAA5 under subdivision B 3 e (1) (b) (i) through (iv) of this section, a system may reduce source water TOC monitoring to quarterly TOC samples taken every 90 days at a location prior to any treatment.

~~(3) Waterworks~~ (c) Owners of waterworks on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for waterworks that must monitor quarterly) or the result of the sample (for waterworks that must monitor no more frequently than annually) is no more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. ~~Waterworks~~ Owners of waterworks that do not meet these levels ~~must~~ shall resume monitoring at the frequency identified in subdivision B ~~3 e (1)~~ 3 e (1) (a) of this section in the quarter immediately following the ~~quarter~~ monitoring period in which the waterworks exceeds 0.060 mg/L or 0.045 mg/L for TTHMs ~~or~~ and HAA5, respectively. For waterworks using only groundwater not under the direct influence of surface water and serving fewer than 10,000 persons, if either the TTHMs annual average is greater than 0.080 mg/L or the HAA5 annual average is greater than 0.060 mg/L, the ~~waterworks must~~ owner shall go to increased monitoring identified in subdivision B ~~3 e (1)~~ 3 e (1) (a) of this section in the quarter immediately following the monitoring period in which the ~~system~~ waterworks exceeds 0.080 mg/L or 0.060 mg/L for TTHM or HAA5 respectively.

~~(4) Waterworks~~ (d) Owners of waterworks on increased monitoring may return to routine monitoring if, after at least one year of monitoring, their TTHM annual average is equal to or less than 0.060 mg/L and their HAA5 annual average is equal to or less than 0.045 mg/L.

~~(5)~~ (e) The commissioner may return a waterworks to routine monitoring at the commissioner's discretion.

(2) Initial distribution system evaluations (IDSE).

(a) This subdivision establishes monitoring and other requirements for identifying locational running annual average (LRAA) compliance monitoring locations for determining compliance with maximum contaminant levels for total trihalomethanes (TTHM) and haloacetic acids (five) (HAA5). Owners shall use an IDSE to determine locations with representative high TTHM and HAA5 concentrations throughout the distribution system. IDSEs are used in conjunction with, but separate from running annual average compliance monitoring locations, subdivision B 3 e (1) (a) of this section, to identify and select locational running annual average compliance monitoring locations, subdivision B 3 e (3) of this section.

(b) This subdivision applies to the following waterworks:

(i) Community waterworks that use a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light; or,

(ii) Nontransient noncommunity waterworks that serve at least 10,000 people and use a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light.

(c) Owners shall comply with the following schedule:

Waterworks Population	Owners shall submit a standard monitoring plan or system specific study plan[1] or 40/30 certification[2] to the commissioner by or receive very small system waiver from the commissioner.	Owners shall complete standard monitoring or system specific study by	Owners shall submit IDSE report to the commissioner by[3]
Waterworks that are not part of a combined distribution system and waterworks that serve the largest population in the combined distribution system			
Egual to or greater than 100,000	October 1, 2006	September 30, 2008	January 1, 2009
50,000-99,999	April 1, 2007	March 31, 2009	July 1, 2009
10,000-49,999	October 1, 2007	September 30, 2009	January 1, 2010
Less than 10,000 (CWS Only)	April 1, 2008	March 31, 2010	July 1, 2010
Other waterworks that are part of a combined distribution system			
Wholesale waterworks or consecutive waterworks	-at the same time as the waterworks with the earliest	-at the same time as the waterworks with the earliest	-at the same time as the waterworks with the earliest

	compliance date in the combined distribution system	compliance date in the combined distribution system	compliance date in the combined distribution system

[1]If, within 12 months after the date identified in this column, the commissioner does not approve the plan or notify the owner that the review has been completed; the owner may consider the submitted plan as approved. The owner shall implement the plan and shall complete standard monitoring or a system specific study no later than the date identified in the third column.

[2]The owner shall submit the 40/30 certification under subdivision B 3 e (2) (d) (v) of this section by the date indicated.

[3]If, within three months after the date identified in this column (nine months after the date identified in this column if the owner is required to comply with the schedule for waterworks populations 10,000 to 49,999), the commissioner does not approve the IDSE report or notify the owner that the review has not been completed, the owner may consider the submitted report as approved and the owner shall implement the recommended monitoring in accordance with subdivision B 3 e (3) of this section as required.

For the purpose of this schedule, the commissioner has determined that the combined distribution system` does not include consecutive waterworks that receive water from a wholesale waterworks only on an emergency basis or receive less than 10% of their total water consumption from a wholesale waterworks. The commissioner has also determined that the combined distribution system does not include wholesale waterworks that deliver water to a consecutive waterworks only on an emergency basis or delivers less than 10% of the total water used by a consecutive waterworks.

(d) Owners shall conduct standard monitoring that meets the requirements in subdivision B 3 e (2) (d) (iii) of this section, or a system specific study that meets the requirements in subdivision B 3 e (2) (d) (iv) of this section, or certify to the commissioner that the waterworks meets 40/30 certification criteria under subdivision B 3 e (2) (d) (v) of this section, or qualify for a very small system waiver under subdivision B 3 e (2) (d) (vi) of this section.

(i) Owners shall have taken the full complement of routine TTHM and HAA5 compliance samples required of a waterworks based on population and source water under subdivision B 3 e (1) of this section (or the owner shall have taken the full complement of reduced TTHM and HAA5 compliance samples required of an owner based population and source water under subdivision B 3 e (1) of this section if the waterworks meet reduced monitoring criteria under subdivision B 3 e (1)) of this section during the period specified in subdivision B 3 e (2) (d) (v) ((a)) of this section to meet the 40/30 certification criteria in subdivision B 3 e (2) (d) (v) of this section. Owners shall have taken TTHM and HAA5 samples under subdivision B 3 e (1) of this section to be eligible for the very small system waiver in subdivision B 3 e (2) (d) (vi) of this section.

(ii) If the owner has not taken the required samples, the owner shall conduct standard monitoring that meets the requirements in subdivision B 3 e (2) (d) (iii) of this section, or a system specific study that meets the requirements in subdivision B 3 e (2) (d) (iv) of this section.

(iii) Standard Monitoring.

((a)) The standard monitoring plan shall comply with the following paragraphs ((i)) through ((iv)). Owners shall prepare and submit the standard monitoring plan to the commissioner according to the schedule in subdivision B 3 e (2) (c) of this section.

((i)) The standard monitoring plan shall include a schematic of the waterworks distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating locations and dates of all projected standard monitoring, and all projected compliance monitoring in accordance with subdivision B 3 e (1) of this section.

((ii)) The standard monitoring plan shall include justification of standard monitoring location selection and a summary of data relied on to justify standard monitoring location selection.

((iii)) The standard monitoring plan shall specify the population served and waterworks type (surface water, groundwater under the direct influence of surface water or groundwater).

((iv)) Owners shall retain a complete copy of the submitted standard monitoring plan, including any modification required by the commissioner of the standard monitoring plan, for as long as the owner is required to retain the IDSE report under subdivision B 3 e (2) (d) (iii) ((c)) ((iv)) of this section.

((b)) Owners shall monitor as indicated in the following table. Owners shall collect dual sample sets at each monitoring location. One sample in the dual sample set shall be analyzed for TTHM. The other sample in the dual sample set shall be analyzed for HAA5. Owners shall conduct one monitoring period during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature. Owners shall review available compliance, study, or operational data to determine the peak historical month for TTHM or HAA5 levels or warmest water temperature.

Source Water Type	Population Size Category	Monitoring Periods and Frequency of Sampling	Distribution System Monitoring Locations[1]				
			Total per monitoring period	Near Entry Points	Average Residence Time	High TTHM Locations	High HAA5 Locations
Surface water or ground-water under the direct influence of surface water.	Less than 500 consecutive systems	one (during peak historical month)[2]	2	1		1	
	Less than 500 nonconsecutive systems		2			1	1
	500-3,300 consecutive systems	four (every 90 days)	2	1		1	
	500-3,300 nonconsecutive systems		2			1	1
	3,301-9,999		4		1	2	1
	10,000-49,999	six (every 60 days)	8	1	2	3	2
	50,000-249,999		16	3	4	5	4
	250,000-999,999		24	4	6	8	6
	1,000,000-4,999,999		32	6	8	10	8
	Equal to or greater than 5,000,000		40	8	10	12	10
Ground-water	Less than 500 consecutive systems	one (during peak historical month)[2]	2	1		1	
	Less than 500 nonconsecutive systems		2			1	1
	500-9,999	four (every 90 days)	2			1	1
	10,000-99,999		6	1	1	2	2
	100,000-499,999		8	1	1	3	3
	Equal to or greater than 500,000		12	2	2	4	4

[1]A dual sample set (i.e., a TTHM and an HAA5 sample) shall be taken at each monitoring location during each monitoring period.

[2]The peak historical month is the month with the highest TTHM or HAA5 levels or the warmest water temperature.

((i)) Owners shall take samples at locations other than the existing monitoring locations used in subdivision B 3 e (1) of this section. Monitoring locations shall be distributed throughout the distribution system.

((ii)) If the number of entry points to the distribution system is fewer than the specified number of entry point monitoring locations, excess entry point samples shall be replaced equally at high TTHM and HAA5 locations. If there is an odd extra location number, the owner shall

take a sample at a high TTHM location. If the number of entry points to the distribution system is more than the specified number of entry point monitoring locations, owners shall take samples at entry points to the distribution system having the highest annual water flows.

((iii)) The monitoring under subdivision B 3 e (2) (d) (iii) ((b)) of this section may not be reduced.

((c)) The IDSE report shall include the elements required in the following paragraphs. Owners shall submit the IDSE report to the commissioner according to the schedule in subdivision B 3 e (2) (c) of this section.

((i)) The IDSE report shall include all TTHM and HAA5 analytical results from compliance monitoring required under subdivision B 3 e (1) of this section and all standard monitoring conducted during the period of the IDSE as individual analytical results and LRAAs presented in a tabular or spreadsheet format acceptable to the commissioner. If changed from the standard monitoring plan submitted under subdivision B 3 e (2) (d) (iii) ((a)) of this section, the report shall also include a schematic of the distribution system, the population served, and system type (surface water, groundwater under the direct influence of surface water or groundwater).

((ii)) The IDSE report shall include an explanation of any deviations from the approved standard monitoring plan.

((iii)) Owners shall recommend and justify the compliance monitoring locations to be used in accordance with subdivision B 3 e (3) of this section and timing based on the protocol in subdivision B 3 e (2) (e) of this section.

((iv)) Owners shall retain a complete copy of the IDSE report submitted under this section for 10 years after the date the report was submitted to the commissioner. If the commissioner modifies the LRAA monitoring requirements recommended in the IDSE report or if the commissioner approves alternative monitoring locations, the owner shall keep a copy of the commissioner's notification on file for 10 years after the date of the commissioner's notification. The owner shall make the IDSE report and any commissioner's notification available for review by the commissioner or the public.

(iv) System Specific Studies.

((a)) The system specific study plan shall be based on either existing monitoring results as required under subdivision B 3 e (2) (d) (iv) ((a)) or modeling as required under subdivision B 3 e (2) (d) (iv) ((a)) of this section. Owners shall prepare and submit the waterworks specific study plan to the commissioner according to the schedule in subdivision B 3 e (2) (c) of this section.

((i)) Existing monitoring results. Owners may comply by submitting monitoring results collected before the waterworks is required to begin monitoring under subdivision B 3 e (2) (c) of this section. The monitoring results and analysis shall meet the criteria in subdivisions ((1)) and ((2)) as follows:

((1)) Minimum requirements.

((A)) TTHM and HAA5 results shall be based on samples collected and analyzed in accordance with 12VAC5-590-440. Samples shall be collected no earlier than five years prior to the study plan submission date.

((B)) The monitoring locations and frequency shall meet the conditions identified in the following table. Each location shall be sampled once during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature for every 12 months of data submitted for that location. Monitoring results shall include all compliance monitoring results in accordance with subdivision B 3 e (1) of this section plus additional monitoring results as necessary to meet minimum sample requirements.

System Type	Population Size Category	Number of Monitoring Locations	Number of Samples	
			TTHM	HAA5
Surface water or groundwater under the direct influence of surface water	Less than 500	3	3	3
	500-3,300	3	9	9
	3,301-9,999	6	36	36
	10,000-49,999	12	72	72
	50,000-249,999	24	144	144
	250,000-999,999	36	216	216
	1,000,000-4,999,999	48	288	288
	Equal to or greater than 5,000,000	60	360	360
Groundwater	Less than 500	3	3	3
	500-9,999	3	9	9
	10,000-99,999	12	48	48
	100,000-499,999	18	72	72

	Equal to or greater than 500,000	24	96	96

((2)) Reporting monitoring results. Owners shall report the following information:

((A)) Owners shall report previously collected monitoring results and certify that the reported monitoring results include all compliance and non-compliance results generated during the time period beginning with the first reported result and ending with the most recent results collected in accordance with subdivision B 3 e (1) of this section.

((B)) Owners shall certify that the samples were representative of the entire distribution system and that treatment, and distribution system have not changed significantly since the samples were collected.

((C)) The study monitoring plan shall include a schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating the locations and dates of all completed or planned system specific study monitoring.

((D)) The system specific study plan shall specify the population served and system type (surface water, groundwater under the direct influence of surface water or groundwater).

((E)) Owners shall retain a complete copy of the system specific study plan submitted, including any modification requested by the commissioner of the system specific study plan, for as long as the owner is required to retain the IDSE report under subdivision B 3 e (2) (d) (iv) ((b)) ((vii)) of this section.

((F)) If previously collected data that fully meets the number of samples required under subdivision B 3 e (2) (d) (iv) ((a)) ((ii)) ((1)) ((b)) of this section and the commissioner rejects some of the data, the owner shall either conduct additional monitoring to replace rejected data on a schedule the commissioner approves or conduct standard monitoring under subdivision B 3 e (2) (d) (iii) of this section.

((ii)) Modeling. Owners may comply through analysis of an extended period simulation hydraulic model. The extended period simulation hydraulic model and analysis shall meet the following criteria:

((1)) Minimum requirements.

((A)) The model shall simulate 24-hour variation in demand and show a consistently repeating 24-hour pattern of residence time.

((B)) The model shall represent the criteria listed in the following table:

75% of pipe volume;
50% of pipe length;
All pressure zones;
All 12-inch diameter and larger pipes;
All 8-inch and larger pipes that connect pressure zones, influence zones from different sources, storage facilities, major demand areas, pumps, and control valves, or are known or expected to be significant conveyors of water;
All 6-inch and larger pipes that connect remote areas of a distribution system to the main portion of the system;
All storage facilities with standard operations represented in the model; and
All active pump stations with controls represented in the model; and
All active control valves.

((C)) The model shall be calibrated, or have calibration plans, for the current configuration of the distribution system during the period of high TTHM formation potential. All storage facilities shall be evaluated as part of the calibration process. All required calibration shall be completed no later than 12 months after plan submission.

((2)) Reporting modeling. The system specific study plan shall include the following information:

((A)) Tabular or spreadsheet data demonstrating that the model meets requirements in subdivision B 3 e (2) (d) (iv) ((a)) ((ii)) ((1)) ((b)) of this section.

((B)) A description of all calibration activities undertaken, and if calibration is complete, a graph of predicted tank levels versus measured tank levels for the storage facility with the highest residence time in each pressure zone, and a time series graph of the residence time at the longest residence time storage facility in the distribution system showing the predictions for the entire simulation period (i.e., from time zero until the time it takes to for the model to reach a consistently repeating pattern of residence time).

((C)) Model output showing preliminary 24-hour average residence time predictions throughout the distribution system.

((D)) Timing and number of samples representative of the distribution system planned for at least one monitoring period of TTHM and HAA5 dual sample monitoring at a number of locations no less than would be required for the system under standard monitoring in subdivision B 3 e (2) (d) (iii) of this section during the historical month of high TTHM. These samples shall be taken at locations other than existing compliance monitoring locations listed in subdivision B 3 e (1) (a) of this section.

((E)) Description of how all requirements will be completed no later than 12 months after owner submits the system specific study plan.

((F)) Schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating the locations and dates of all completed system specific study monitoring (if calibration is complete) and all compliance monitoring listed in subdivision B 3 e (1) (a) of this section.

((G)) Population served and system type (surface water, groundwater under the direct influence of surface water or groundwater).

((H)) Owners shall retain a complete copy of the system specific study plan submitted, including any modification recommended by the commissioner to the waterworks specific study plan, for as long as the owner is required to retain the IDSE report under subdivision B 3 e (2) (d) (iv) ((b)) ((vii)) of this section.

((3)) If an owner submits a model that does not fully meet the requirements under paragraph (iv) ((a)) ((ii)) of this section, the owners shall correct the deficiencies and respond to commissioner's inquiries concerning the model. If the owner fails to correct deficiencies or respond to inquiries to the commissioner's satisfaction, the owner shall conduct standard monitoring under subdivision B 3 e (2) (d) (iii) of this section.

((b)) The IDSE report shall include the elements required in the following paragraphs. Owners shall submit the IDSE report according to the schedule in subdivision B 3 e (2) (c) of this section.

((i)) The IDSE report shall include all TTHM and HAA5 analytical results from compliance monitoring in subdivision B 3 e (1) (a) of this section and all system specific study monitoring conducted during the period of the system specific study presented in a tabular or spreadsheet format acceptable to the commissioner. If changed from the system specific study plan submitted under subdivision B 3 e (2) (d) (iv) ((a)) of this section, the IDSE report shall also include a schematic of the distribution system, the population served; and system type (surface water, groundwater under the direct influence of surface water or groundwater).

((ii)) Owners of waterworks using the modeling provision under subdivision B 3 e (2) (d) (iv) ((a)) ((ii)) of this section shall include final information for the elements described in subdivision B 3 e (2) (d) (iv) ((a)) ((ii)) ((2)) of this section, and a 24-hour time series graph of residence time for each LRAA compliance monitoring location selected.

((iii)) The owner shall recommend and justify LRAA compliance monitoring locations and timing based on the protocol in subdivision B 3 e (2) (e) of this section.

((iv)) The IDSE report shall include an explanation of any deviations from the waterworks approved system specific study plan.

((v)) The IDSE report shall include the basis (analytical and modeling results) and justification the owner used to select the recommended LRAA monitoring locations.

((vi)) The owner may submit the IDSE report in lieu of the system specific study plan on the schedule identified in subdivision B 3 e (2) (c) of this section for submission of the system specific study plan if the owner believes the necessary information has been obtained by the time that the waterworks specific study plan is due. If the owner elects this approach, the IDSE report shall also include all information required under subdivision B 3 e (2) (d) (iv) ((a)) of this section.

((vii)) The owner shall retain a complete copy of the IDSE report submitted under this subdivision for 10 years after the date submitted. If the commissioner modifies the LRAA monitoring requirements that the owner recommended in the IDSE report or if the commissioner approves alternative monitoring locations, the owner shall keep a copy of the commissioner's notification on file for 10 years after the date of the commissioner's notification. The owner shall make the IDSE report and any notification from the commissioner available for review by the commissioner or the public.

(v) 40/30 certifications.

((a)) Eligibility. Waterworks are eligible for 40/30 certification if the waterworks had no TTHM or HAA5 monitoring violations under subdivision B 3 e (1) of this section and no individual sample exceeded 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 during an eight consecutive calendar quarter period beginning no earlier than the date specified in the following table.

If the waterworks 40/30 Certification Is Due	Then the waterworks eligibility for 40/30 certification is based on eight consecutive calendar quarters of compliance monitoring under subdivision B 3 e (1) results beginning no earlier than[1]
October 1, 2006	January 2004
April 1, 2007	January 2004
October 1, 2007	January 2005

April 1, 2008	January 2005

[1]Unless the waterworks is on reduced monitoring under subdivision B 3 e (1) of this section and was not required to monitor during the specified period. If the owner did not monitor during the specified period, the owner shall base eligibility on compliance samples taken during the 12 months preceding the specified period.

((b)) Requirements for 40/30 certification:

((i)) Certify to the commissioner that every individual compliance sample taken under subdivision B 3 e (1) of this section during the periods specified in subdivision B 3 e (2) (d) (v) ((a)) of this section were less than or equal to 0.040 mg/L for TTHM and less than or equal to 0.030 mg/L for HAA5, and that the waterworks has not had any TTHM or HAA5 monitoring violations during the period specified in subdivision ((a)).

((ii)) The commissioner may require the owner to submit compliance monitoring results, distribution system schematics, and/or recommended LRAA compliance monitoring locations in addition to the certification. If an owner fails to submit the requested information, the commissioner may require standard monitoring under subdivision B 3 e (2) (d) (iii) of this section or a system specific study under subdivision B 3 e (2) (d) (iv) of this section.

((iii)) The commissioner may still require standard monitoring under subdivision B 3 e (2) (d) (iii) or a system specific study under subdivision B 3 e (2) (d) (iv) of this section even if the waterworks meet the criteria in subdivision B 3 e (2) (d) (v) ((a)) of this section.

((iv)) The owner shall retain a complete copy of the certification submitted under this subdivision for 10 years after the date that the owner submitted the certification. The owner shall make the certification, all data upon which the certification is based, and any notification from the commissioner available for review by the commissioner or the public.

(vi) Very small system waivers.

((a)) If the waterworks serves fewer than 500 people and has taken TTHM and HAA5 samples under subdivision B 3 e (1) of this section, the owner is not required to comply with this subdivision unless the commissioner notifies the owner to conduct standard monitoring under subdivision B 3 e (2) (d) (iii) or a system specific study under subdivision B 3 e (2) (d) (iv) of this section.

((b)) If the owner has not taken TTHM and HAA5 samples under subdivision B 3 e (1) of this section or if the commissioner notifies the owner to comply with this subdivision, the owner shall conduct standard monitoring under subdivision B 3 e (2) (d) (iii) of this section or a system specific study under subdivision B 3 e (2) (d) (iv) of this section.

(e) LRAA compliance monitoring location recommendations.

(i) The IDSE report shall include recommendations and justification for where and during what month(s) TTHM and HAA5 monitoring in accordance with subdivision B 3 e (3) of this section should be conducted. These recommendations shall be based on the criteria in the paragraphs in this section.

(ii) Owners shall select the number of monitoring locations specified in the following table. These recommended locations will be used as LRAA routine compliance monitoring locations, unless the commissioner requires different or additional locations. The locations should be distributed throughout the distribution system to the extent possible.

Source Water Type	Population Size Category	Monitoring Frequency[1]	Distribution System Monitoring Location			
			Total per monitoring period[2]	Highest TTHM Locations	Highest HAA5 Locations	Existing Compliance Locations in accordance with subdivision B 3 e (1)
Surface water or ground-water under the direct influence	Less than 500	per year	2	1	1	
	500-3,300	per quarter	2	1	1	
	3,301-9,999	per quarter	2	1	1	
	10,000-49,999	per quarter	4	2	1	1
	50,000-249,999	per quarter	8	3	3	2

of surface water	250,000-999,999	per quarter	12	5	4	3
	1,000,000-4,999,999	per quarter	16	6	6	4
	Equal to or greater than 5,000,000	per quarter	20	8	7	5
Ground-water	Less than 500	per year	2	1	1	
	500-9,999	per year	2	1	1	
	10,000-99,999	per quarter	4	2	1	1
	100,000-499,999	per quarter	6	3	2	1
	Equal to or greater than 500,000	per quarter	8	3	3	2

[1]All owners shall monitor during month of highest DBP concentrations.

[2]Owners of waterworks on quarterly monitoring (except for surface water source or GUDI source waterworks serving 500-3,300) shall take dual sample sets every 90 days at each monitoring location. Groundwater source waterworks serving 500-9,999 (on annual monitoring) shall take dual sample sets annually at each monitoring location. Waterworks serving fewer than 500 and surface water source or GUDI source waterworks serving 500-3,300 shall take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. Waterworks serving fewer than 500 shall sample annually and surface water source or GUDI source systems serving 500-3,300 shall sample every 90 days. Only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location (and month, if monitoring annually).

(iii) Owners shall recommend LRRA compliance monitoring locations based on standard monitoring results, system specific study results, and compliance monitoring results under subdivision B 3 e (1) of this section. Owners shall follow the protocol in subdivision B 3 e (2) (e) (iii) ((a)) through ((h)) of this section. If required to monitor at more than eight locations, the owner shall repeat the protocol as necessary. If a owner does not have existing compliance monitoring results under subdivision B 3 e (1) of this section or if the owner does not have enough existing compliance monitoring results under subdivision B 3 e (1) of this section, the owner shall repeat the protocol, skipping the provisions of subdivision B 3 e (2) (e) (iii) ((c)) and ((g)) of this section as necessary, until the owner has identified the required total number of monitoring locations.

((a)) Location with the highest TTHM LRAA not previously selected as a LRAA monitoring location.

((b)) Location with the highest HAA5 LRAA not previously selected as a LRAA monitoring location.

((c)) Existing average residence time compliance monitoring location under subdivision B 3 e (1) of this section (maximum residence time compliance monitoring location for ground water systems) with the highest HAA5 LRAA not previously selected as a LRAA monitoring location.

((d)) Location with the highest TTHM LRAA not previously selected as a LRAA monitoring location.

((e)) Location with the highest TTHM LRAA not previously selected as a LRAA monitoring location.

((f)) Location with the highest HAA5 LRAA not previously selected as a LRAA monitoring location.

((g)) Existing average residence time compliance monitoring location under subdivision B 3 e (1) of this section (maximum residence time compliance monitoring location for ground water systems) with the highest TTHM LRAA not previously selected as a LRAA monitoring location.

((h)) Location with the highest HAA5 LRAA not previously selected as a LRAA monitoring location.

(iv) An owner may recommend locations other than those specified in subdivision B 3 e (2) (e) (iii) of this section if the owner includes a rationale for selecting other locations. If the commissioner approves the alternate locations, the owners shall monitor at these locations to determine compliance under subdivision B 3 e (3) of this section.

(v) The recommended schedule shall include LRAA monitoring during the peak historical month for TTHM and HAA5 concentration, unless the commissioner approves another month. Once the owner has identified the peak historical month, and if the owner is required to

conduct routine monitoring at least quarterly, the owner shall schedule LRAA compliance monitoring at a regular frequency of every 90 days or fewer.

(f) The owner shall use only the analytical methods specified in 12VAC5-590-440, or otherwise approved by EPA for monitoring, to demonstrate compliance.

(g) IDSE results will not be used for the purpose of determining compliance with MCLs in Table 2.13.

(3) Locational running annual average monitoring requirements.

(a) This subdivision establishes monitoring and other requirements for achieving compliance with maximum contaminant levels based on locational running annual averages (LRAA) for total trihalomethanes (TTHM) and haloacetic acids (five) (HAA5), and for achieving compliance with maximum residual disinfectant residuals for chlorine and chloramines for certain consecutive systems.

(b) This subdivision applies to community waterworks or nontransient noncommunity waterworks that uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light.

(c) Owner shall comply on the schedule in the following table based on the type of waterworks:

Type of Waterworks	Waterworks shall comply with Locational Running Average monitoring by:[1]
Waterworks that are not part of a combined distribution system and waterworks that serve the largest population in the combined distribution system	
Waterworks serving equal to or greater than 100,000	April 1, 2012
Waterworks serving 50,000-99,999	October 1, 2012
Waterworks serving 10,000-49,999	October 1, 2013
Waterworks serving less than 10,000	October 1, 2013 if no Cryptosporidium monitoring is required under 12VAC5-590-420 subdivision B 3 a (1) (c) or October 1, 2014 if Cryptosporidium monitoring is required under 12VAC5-590-420 subdivision B 3 a (1) (c)
Other waterworks that are part of a combined distribution system	
Consecutive waterworks or wholesale waterworks	-at the same time as the waterworks with the earliest compliance date in the combined distribution system

[1]The commissioner may grant up to an additional 24 months for compliance with MCLs and operational evaluation levels if the waterworks require capital improvements to comply with an MCL.

(i) Waterworks monitoring frequency is specified in subdivision B 3 e (3) (d) (ii) of this section.

((a)) Owners of waterworks required to conduct quarterly monitoring shall begin monitoring in the first full calendar quarter that includes the compliance date in the table in subdivision B 3 e (3) (c) of this section.

((b)) Owners of waterworks required to conduct monitoring at a frequency that is less than quarterly shall begin monitoring in the calendar month recommended in the IDSE report prepared under subdivision B 3 e (2) (d) (iii) or subdivision B 3 e (2) (d) (iv) of this section or the calendar month identified in the LRAA monitoring plan developed under subdivision B 3 e (3) (e) of this section no later than 12 months after the compliance date in the table in subdivision B 3 e (3) (c) of this section.

(ii) Owners of waterworks required to conduct quarterly monitoring shall make compliance calculations at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter (or earlier if the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters). Owners of waterworks required to conduct monitoring at a frequency that is less than quarterly shall make compliance calculations beginning with the first compliance sample taken after the compliance date.

(iii) For the purpose of the schedule in subdivision B 3 e (3) (c) of this section, the commissioner has determine that the combined distribution system does not include consecutive waterworks that receive water from a wholesale waterworks only on an emergency basis or receive less than 10% of their total water consumption from a wholesale waterworks. The commissioner has also determine that the combined distribution system does not include wholesale waterworks which deliver water to a consecutive waterworks only on an emergency basis or deliver less than 10% of the total water used by a consecutive waterworks.

(d) Routine monitoring.

(i) Owners submitting an IDSE report shall begin monitoring at the locations and months the owner recommended in the IDSE report submitted under subdivision B 3 e (2) (e) of this section following the

schedule in subdivision B 3 e (3) (c) of this section, unless the commissioner requires other locations or additional locations after review. If the owner submitted a 40/30 certification under subdivision B 3 e (2) (d) (v) of this section or the waterworks qualified for a very small system waiver under subdivision B 3 e (2) (d) (vi) of this section or the waterworks is a nontransient noncommunity waterworks serving less than 10,000, the owner shall monitor at the location(s) and dates identified in the monitoring plan in subdivision B 3 j of this section, updated as required by subdivision B 3 e (3) (e) of this section.

(ii) Owners shall monitor at no fewer than the number of locations identified in the following table:

Source Water Type	Population Size Category	Monitoring Frequency[1]	Distribution System Monitoring Location Total per Monitoring Period[2]
Surface water or groundwater under the direct influence of surface water	Less than 500	per year	2
	500-3,300	per quarter	2
	3,301-9,999	per quarter	2
	10,000-49,999	per quarter	4
	50,000-249,999	per quarter	8
	250,000-999,999	per quarter	12
	1,000,000-4,999,999	per quarter	16
	Equal to or greater than 5,000,000	per quarter	20
Groundwater	Less than 500	per year	2
	500-9,999	per year	2
	10,000-99,999	per quarter	4
	100,000-499,999	per quarter	6
	Equal to or greater than 500,000	per quarter	8

[1]All owners shall monitor during month of highest DBP concentrations.

[2]Owners of waterworks on quarterly monitoring (except for surface water source or GUDI source waterworks serving 500-3,300) shall take dual sample sets every 90 days at each monitoring location. Groundwater source waterworks serving 500-9,999 (on annual monitoring) shall take dual sample sets annually at each monitoring location. Waterworks serving fewer than 500 and surface water source or GUDI source waterworks serving 500-3,300 shall take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. Waterworks serving fewer than 500 shall sample annually and surface water source or GUDI source systems serving 500-3,300 shall sample every 90 days. Only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location (and month, if monitoring annually).

(iii) Owners of waterworks not using disinfection that begin using a disinfectant other than UV light after the dates in subdivision B 3 e (2) of this section for complying with the IDSE requirements shall consult with the commissioner to identify compliance monitoring locations. Owners shall then develop a monitoring plan under subdivision B 3 e (3) (e) of this section that includes those monitoring locations.

(iv) Owners shall use an approved method listed in 12VAC5-590-440 for TTHM and HAA5 analyses. Analyses shall be conducted by laboratories that have received certification by EPA or the state as specified in 12VAC5-590-440.

(e) Monitoring plan.

(i) Owners shall develop and implement a monitoring plan to be kept on file for review by the commissioner and the public. The monitoring plan shall be completed no later than the date the owner conducts the initial monitoring and contain:

((a)) Monitoring locations;

((b)) Monitoring dates; and

((c)) Compliance calculation procedures.

(ii) If the owner was not required to submit an IDSE report under either subdivision B 3 e (2) (d) (iii) or subdivision B 3 e (2) (d) (iv) of this section, and the waterworks did not have sufficient monitoring locations under subdivision B 3 e (1) of this section to identify the required number of LRAA compliance monitoring locations indicated in subdivision B 3 e (2) (e) (ii) of this section, the owner shall identify additional locations by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified. The owner shall also provide the rationale for identifying the locations as having high levels of TTHM or HAA5. If the waterworks has more monitoring locations under subdivision B 3 e (1) of this section than required for LRAA compliance monitoring in subdivision B 3 e (2) (e) (ii) of this section, the owner shall identify which locations the waterworks will use for

LRAA compliance monitoring by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of LRAA compliance monitoring locations have been identified.

(iii) Owners of waterworks using surface water or groundwater under the direct influence of surface water serving more than 3,300 people shall submit a copy of the monitoring plan to the commissioner prior to the date the waterworks conducts the initial monitoring, unless the IDSE report submitted under subdivision B 3 e (2) of this section contains all the information required by this section.

(iv) Owners may revise the monitoring plan to reflect changes in treatment, distribution system operations and layout (including new service areas), or other factors that may affect TTHM or HAA5 formation, or for reasons approved by the commissioner, after consultation with the commissioner regarding the need for changes and the appropriateness of the changes. If the owner changes monitoring locations, the owner shall replace existing compliance monitoring locations with the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels. The commissioner may also require modifications in the monitoring plan. Owners of waterworks using surface water or groundwater under the direct influence of surface water serving more than 3,300 people shall submit a copy of the modified monitoring plan to the commissioner prior to the date the owner is required to comply with the revised monitoring plan.

(f) Reduced monitoring

(i) Owners may reduce monitoring to the level specified in the following table any time the LRAA is less than or equal to 0.040 mg/L for TTHM and less than or equal to 0.030 mg/L for HAA5 at all monitoring locations. Owners may only use data collected under the provisions of this subdivision or subdivision B 3 e (1) of this section to qualify for reduced monitoring. In addition, the source water annual average TOC level, before any treatment, shall be less than or equal to 4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either subdivision B 3 e (1) (b) (vi) or B 3 i of this section.

Source Water Type	Population Size Category	Monitoring Frequency[1]	Distribution System Monitoring Location per Monitoring Period
Surface water or groundwater under the direct influence of surface water	Less than 500		monitoring may not be reduced
	500-3,300	per year	1 TTHM and 1 HAA5 sample: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement; 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.
	3,301-9,999	per year	2 dual sample sets: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement
	10,000-49,999	per quarter	2 dual sample sets at the locations with the highest TTHM and highest HAA5 LRAAs

	50,000-249,999	per quarter	4 dual sample sets - at the locations with the two highest TTHM and two highest HAA5 LRAAs
	250,000-999,999	per quarter	6 dual sample sets - at the locations with the three highest TTHM and three highest HAA5 LRAAs
	1,000,000-4,999,999	per quarter	8 dual sample sets - at the locations with the four highest TTHM and four highest HAA5 LRAAs
	Equal to or greater than 5,000,000	per quarter	10 dual sample sets - at the locations with the five highest TTHM and five highest HAA5 LRAAs
Groundwater	Less than 500	every third year	1 TTHM and 1 HAA5 sample: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement; 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.
	500-9,999	per year	1 TTHM and 1 HAA5 sample: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement; 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.
	10,000-99,999	per year	2 dual sample sets: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement
	100,000-499,999	per quarter	2 dual sample sets; at the locations with the highest TTHM and highest HAA5 LRAAs
	Equal to or greater than 500,000	per quarter	4 dual sample sets at the locations with the two highest TTHM and two highest HAA5 LRAAs

[1]Owners of waterworks on quarterly monitoring shall take dual sample sets every 90 days.

(ii) owners may remain on reduced monitoring as long as the TTHM LRAA is less than or equal to 0.040 mg/L and

the HAA5 LRAA is less than or equal to 0.030 mg/L at each monitoring location (for waterworks with quarterly reduced monitoring) or each TTHM sample is less than or equal to 0.060 mg/L and each HAA5 sample is less than or equal to 0.045 mg/L (for waterworks with annual or less frequent monitoring). In addition, the source water annual average TOC level, before any treatment, shall be less than or equal to 4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either subdivision B 3 e (1) (b) (vi) or B 3 i of this section.

(iii) If the LRAA based on quarterly monitoring at any monitoring location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 or if the annual (or less frequent) sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5, or if the source water annual average TOC level, before any treatment, is greater than 4.0 mg/L at any treatment plant treating surface water or ground water under the direct influence of surface water, the owner shall resume routine monitoring under subdivision B 3 e (3) (d) of this section or begin increased monitoring if subdivision B 3 e (3) (g) of this section applies.

(iv) The commissioner may return the waterworks to routine monitoring at the commissioner's discretion.

(v) A waterworks may remain on reduced monitoring after the dates identified in subdivision B 3 e (3) (c) of this section for compliance with this section only if the waterworks qualifies for a 40/30 certification under subdivision B 3 e (2) (d) (v) of this section or has received a very small system waiver under subdivision B 3 e (2) (d) (vi) of this section, plus the waterworks meets the reduced monitoring criteria in subdivision B 3 e (3) (f) of this section, and the owner did not change or add monitoring locations from those used for compliance monitoring under subdivision B 3 e (1) of this section. If the monitoring locations under this subdivision differ from the monitoring locations under subdivision B 3 e (1) of this section, the owner may not remain on reduced monitoring after the dates identified in subdivision B 3 e (3) (c) of this section for compliance with this subdivision.

(g) Increased monitoring.

(i) Owners of waterworks required to monitor at a particular location annually or less frequently than annually under subdivision B 3 e (3) (d) or subdivision B 3 e (3) (f) of this section, shall increase monitoring to dual sample sets once per quarter (taken every 90 days) at all locations if a TTHM sample is greater than 0.080 mg/L or a HAA5 sample is greater than 0.060 mg/L at any location.

(ii) A waterworks is in violation of the MCL when the LRAA exceeds the MCLs in Table 2.13, calculated based on four consecutive quarters of monitoring (or the LRAA calculated based on fewer than four quarters of data if the MCL would be exceeded regardless of the monitoring results of subsequent quarters). Waterworks are in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if the owner fails to monitor.

(iii) Owners may return to routine monitoring once the waterworks has conducted increased monitoring for at least four consecutive quarters and the LRAA for every monitoring location is less than or equal to 0.060 mg/L for TTHM and less than or equal to 0.045 mg/L for HAA5.

(iv) Owners of waterworks on increased monitoring under subdivision e (1) in this section shall remain on increased monitoring until the waterworks qualify for a return to routine monitoring under subdivision B 3 e (3) (g) (iii) of this section. The owner shall conduct increased monitoring under subdivision B 3 e (3) (g) of this section at the monitoring locations in the monitoring plan developed under subdivision B 3 e (3) (e) of this section beginning at the date identified in subdivision B 3 e (3) (c) of this section for compliance with this subdivision and remain on increased monitoring until the waterworks qualifies for a return to routine monitoring under subdivision B 3 e (3) (g) (iii) of this section.

f. Chlorite. ~~Community~~ Owners of community and nontransient noncommunity waterworks using chlorine dioxide, for disinfection or oxidation, ~~must~~ shall conduct monitoring for chlorite.

(1) Routine monitoring.

(a) Daily monitoring. ~~Waterworks must~~ Owners shall take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite PMCL in Table 2.13, the ~~waterworks must~~ owner shall take additional samples in the distribution system the following day at the locations required by subdivision B 3 f (1) (c) of this section, in addition to the sample required at the entrance to the distribution system.

(b) Monthly monitoring. ~~Waterworks must~~ Owners shall take a three-sample set each month in the distribution system. The ~~waterworks must~~ owner shall take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling ~~must~~ shall be conducted in the same manner (as three-sample sets, at the specified locations). The ~~waterworks~~ owner may use the results of additional monitoring conducted under subdivision B 3 f (1) (c) of

this section to meet the requirement for monitoring in this paragraph.

(c) Additional monitoring requirements. On each day following a routine sample monitoring result that exceeds the chlorite PMCL in Table 2.13 at the entrance to the distribution system, the ~~waterworks~~ owner is required to take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(2) Reduced monitoring.

(a) Chlorite monitoring at the entrance to the distribution system required by subdivision B 3 f (1) (a) of this section may not be reduced.

(b) Chlorite monitoring in the distribution system required by subdivision B 3 f (1) (b) of this section may be reduced to one three-sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system under subdivision B 3 f (1) (b) of this section has exceeded the chlorite PMCL in Table 2.13 and the ~~waterworks~~ owner has not been required to conduct monitoring under subdivision B 3 f (1) (c) of this section. The ~~waterworks~~ owner may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system under subdivision B 3 f (1) (b) of this section exceeds the chlorite PMCL or the ~~waterworks~~ owner is required to conduct monitoring under subdivision B 3 f (1) (c) of this section, at which time the ~~waterworks must~~ owner shall revert to routine monitoring.

g. Bromate.

(1) ~~Each~~ The owner of a community ~~and~~ or nontransient noncommunity waterworks treatment plant using ozone, for disinfection or oxidation, ~~must~~ shall take one sample per month and analyze it for bromate. ~~Waterworks must~~ The owner shall take samples monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

~~(2) Waterworks required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the waterworks demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for one year. The waterworks may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L based upon representative monthly measurements. If the running annual average source water bromide concentration is equal to or greater than 0.05 mg/L, the waterworks must resume routine monitoring required by subdivision B 3 g (1) of this section.~~

(2) Reduced monitoring.

(a) Until March 31, 2009, owners of waterworks required to analyze for bromate may reduce monitoring from monthly to quarterly, if the waterworks average source water bromide concentration is less than 0.05 mg/L based on representative monthly bromide measurements for one year. The owner may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L based on representative monthly measurements. If the running annual average source water bromide concentration is equal to or greater than 0.05 mg/L, the owner shall resume routine monitoring required by subdivision B 3 g (1) of this section in the following month.

(b) Beginning April 1, 2009, owners may no longer use the provisions of subdivision B 3 g (2) (a) of this section to qualify for reduced monitoring. An owner required to analyze for bromate may reduce monitoring from monthly to quarterly, if the waterworks running annual average bromate concentration is equal to or less than 0.0025 mg/L based on monthly bromate measurements under subdivision B 3 g (1) of this section for the most recent four quarters, with samples analyzed in accordance with 12VAC5-590-440. If a waterworks has qualified for reduced bromate monitoring under subdivision B 3 g (2) (a) of this section, the owner may remain on reduced monitoring as long as the running annual average of quarterly bromate samples is equal to or less than 0.0025 mg/L based on samples analyzed in accordance with 12VAC5-590-440. If the running annual average bromate concentration is greater than 0.0025 mg/L, the owner shall resume routine monitoring required by subdivision B 3 g (1) of this section.

(3) Bromide. ~~Waterworks~~ Owners of waterworks required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter, if the ~~waterworks~~ owner demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly measurements for one year. The ~~waterworks must~~ owner shall continue bromide monitoring to remain on reduced bromate monitoring.

h. Monitoring requirements for disinfectant residuals.

(1) Chlorine and chloramines.

(a) ~~Waterworks~~ Owners of waterworks that use chlorine or chloramines ~~must~~ shall measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified in subsection A

~~of this section~~. ~~Waterworks~~ Owners of waterworks that use surface water or groundwater under the direct influence of surface water may use the results of residual disinfectant concentration sampling found in subdivision B 7 c (1) of this section in lieu of taking separate samples.

(b) Residual disinfectant level monitoring may not be reduced.

(2) Chlorine dioxide.

(a) ~~Waterworks~~ Owners of waterworks that use chlorine dioxide for disinfection or oxidation ~~must~~ shall take daily samples at the entrance to the distribution system. For any daily sample that exceeds the MRDL in Table 2.12, the ~~waterworks must~~ owner shall take samples in the distribution system the following day at the locations required by subdivision B 3 h (2) (b) of this section, in addition to the sample required at the entrance to the distribution system.

(b) On each day following a routine sample monitoring result that exceeds the MRDL in Table 2.12, the ~~waterworks~~ owner is required to take three chlorine dioxide distribution system samples. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system (i.e., no booster chlorination), the ~~waterworks must~~ owner shall take three samples as close to the first customer as possible, at intervals of at least six hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system (i.e., booster chlorination), the ~~waterworks must~~ owner shall take one sample at each of the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(c) Chlorine dioxide monitoring may not be reduced.

i. Monitoring requirements for disinfection byproduct precursors (DBPP).

(1) ~~Community~~ Owners of community or nontransient noncommunity waterworks using surface water or groundwater under the direct influence of surface water and using conventional filtration treatment (as defined in 12VAC5-590-10) ~~must~~ shall monitor each treatment plant for TOC no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. All ~~waterworks~~ owners required to monitor under ~~this~~ subdivision (B 3 i (1)) ~~must~~ shall also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time as the source water sample is taken, all ~~waterworks must~~ owners shall monitor for alkalinity in the source water prior to any treatment. ~~Waterworks must~~ Owners shall take one paired sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(2) ~~Community~~ Owners of community or nontransient noncommunity waterworks that use surface water or groundwater under the direct influence of surface water with an average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may reduce monitoring for both TOC and alkalinity to one paired sample and one source water alkalinity sample per plant per quarter. The ~~waterworks must~~ owners shall revert to routine monitoring in the month following the quarter when the annual average treated water TOC equal to or greater than 2.0 mg/L.

j. ~~Each~~ The owner of each waterworks required to monitor under subdivision B 3 of this section ~~must~~ shall develop and implement a monitoring plan. The ~~waterworks must~~ owner shall maintain the plan and make it available for inspection by the commissioner and the general public no later than 30 days following the applicable compliance dates in subdivision B 3 a of this section. ~~All~~ The owners of all community or nontransient noncommunity waterworks that use surface water or groundwater under the direct influence of surface water serving more than 3,300 people ~~must~~ shall submit a copy of the monitoring plan to the commissioner no later than the date of the first report required under 12VAC5-590-530 A. The commissioner may also require the plan to be submitted by any other ~~waterworks~~ owner. After review, the commissioner may require changes in any plan elements. The plan ~~must~~ shall include at least the following elements:

(1) Specific locations and schedules for collecting samples for any parameters included in subdivision B 3 of this section.

(2) How the ~~waterworks~~ owner will calculate compliance with PMCLs, MRDLs, and treatment techniques.

(3) The sampling plan for a consecutive waterworks ~~must~~ shall reflect the entire consecutive distribution system.

4. Unregulated contaminants (UCs). ~~All~~ Owners of all community and nontransient noncommunity waterworks shall sample for the contaminants listed in Table 2.6 and Table 2.7 as follows:

a. Table 2.6—Group A

(1) Owners of waterworks ~~which~~ that use a surface water source in whole or in part shall sample at the entry points to the distribution system which is representative of each source, after treatment (hereafter called a sampling point). The minimum number of samples is one year of consecutive quarterly samples per sampling point beginning in accordance with Table 2.8.

(2) Owners of waterworks ~~which~~ that use groundwater shall sample at points of entry to the distribution system which is representative of each source (hereafter called a sampling point). The minimum number of samples is one sample per sampling point beginning in accordance with Table 2.8.

(3) The commissioner may require a confirmation sample for positive or negative results.

(4) ~~Waterworks~~ Owners of waterworks serving less than 150 connections may inform the commissioner, in writing, that their waterworks is available for sampling instead of performing the required sampling.

(5) All waterworks required to sample under this section shall repeat the sampling at least every five years.

b. Table 2.6—Group B and Table 2.7

(1) The owner of each community and nontransient noncommunity waterworks ~~owner~~ shall take four consecutive quarterly samples at the entry points to the distribution system which is representative of each source (hereafter called a sampling point) for each contaminant listed in Table 2.6 Group B and report the results to the commissioner. Monitoring shall be completed by December 31, 1995.

(2) The owner of each community and nontransient noncommunity waterworks shall take one sample at each sampling point for each contaminant listed in Table 2.7 and report the results to the commissioner. Monitoring shall be completed by December 31, 1995.

(3) The owner of each community and nontransient noncommunity waterworks may apply to the commissioner for a waiver from the monitoring requirements of subdivisions B 4 b (1) and (2) of this section for the contaminants listed in Table 2.6 Group B and Table 2.7.

(4) The commissioner may grant a waiver for the requirement of subdivision B 4 b (1) of this section based on the criteria specified in subdivision B 2 f of this section. The commissioner may grant a waiver from the requirement of subdivision B 4 b (2) of this section if previous analytical results indicate contamination would not occur, provided this data was collected after January 1, 1990.

(5) If the waterworks utilizes more than one source and the sources are combined before distribution, the ~~waterworks~~ owner shall sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(6) The commissioner may require a confirmation sample for positive or negative results.

(7) Instead of performing the monitoring required by this section, the owner of a community waterworks or nontransient noncommunity waterworks serving fewer than 150 service connections may send a letter to the commissioner stating that the waterworks is available for sampling. This letter shall be sent to the commissioner by January 1, 1994. The ~~waterworks~~ owner shall not send such samples to the commissioner unless requested to do so by the commissioner.

(8) All waterworks required to sample under this ~~section~~ subdivision shall repeat the sampling at least every five years.

5. Repealed.

6. Monitoring requirements for lead and copper. The owners of all community and nontransient noncommunity waterworks shall monitor for lead and copper in tap water (subdivision B 6 a of this section), water quality (corrosion) parameters in the distribution system and at entry points (subdivision B 6 b of this section), and lead and copper in water supplies (subdivision B 6 c of this section). The monitoring requirements contained in this section are summarized in Appendix M.

a. Monitoring requirements for lead and copper in tap water.

(1) Sample site location.

(a) By the applicable date for commencement of monitoring under subdivision B 6 a (4) (a) of this section, each ~~waterworks~~ owner shall complete a materials evaluation of the distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficiently large to ensure that the owner can collect the number of lead and copper tap samples required in subdivision B 6 a (3) of this section. All sites from which first draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(b) ~~A waterworks~~ An owner shall use the information on lead, copper, and galvanized steel that the owner is required to collect when conducting a materials evaluation (reference Appendix B Corrosion). When this evaluation is insufficient to locate the requisite number of

lead and copper sampling sites that meet the targeting criteria of this section, the owner shall review the sources of information listed below in order to identify a sufficient number of sampling sites. In addition, the owner shall seek to collect such information where possible in the course of its normal operations (e.g., checking service line materials when reading water meters or performing maintenance activities):

(i) All plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system;

(ii) All inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and

(iii) All existing water quality information, which includes the results of all prior analyses of the waterworks or individual structures connected to the waterworks, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(c) The sampling sites selected for a community waterworks' sampling pool ("tier 1 sampling sites") shall consist of single family structures that:

(i) Contain copper pipes with lead solder installed between January 1983 and April 1986 or contain lead pipes; and/or

(ii) Are served by a lead service line.

NOTE: When multiple-family residences comprise at least 20% of the structures served by a waterworks, the ~~waterworks~~ owner may include these types of structures in ~~its~~ the sampling pool.

(d) The owner of any community waterworks with insufficient tier 1 sampling sites shall complete the sampling pool with "tier 2 sampling sites," consisting of buildings, including multiple-family residences that:

(i) Contain copper pipes with lead solder installed between January 1983 and April 1986 or contain lead pipes; and/or

(ii) Are served by a lead service line.

(e) The owner of any community waterworks with insufficient tier 1 and tier 2 sampling sites shall complete the sampling pool with "tier 3 sampling sites," consisting of single family structures that contain copper pipes with lead solder installed before 1983. The owner of a community waterworks with insufficient tier 1, tier 2, and tier 3 sampling sites shall complete the sampling pool with representative sites throughout the distribution system. For the purpose of this paragraph, a representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the waterworks.

(f) The sampling sites selected for a nontransient noncommunity waterworks ("tier 1 sampling sites") shall consist of buildings that:

(i) Contain copper pipes with lead solder installed between January 1983 and April 1986 or contain lead pipes; and/or

(ii) Are served by a lead service line.

(g) The owner of a nontransient noncommunity waterworks with insufficient tier 1 sites that meet the targeting criteria in subdivision B 6 a (1) (f) of this section shall complete the sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983. If additional sites are needed to complete the sampling pool, the owner of a nontransient noncommunity waterworks shall use representative sites throughout the distribution system. For the purpose of this paragraph, a representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the waterworks.

(h) The owner of any waterworks whose distribution system contains lead service lines shall draw 50% of the samples the owner collects during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and 50% of the samples the owner collects from sites served by a lead service line. Any owner who cannot identify a sufficient number of sampling sites served by a lead service line shall collect first draw tap samples from all of the sites identified as being served by such lines.

(2) Sample collection methods.

(a) All tap samples for lead and copper, with the exception of lead service line samples collected under 12VAC5-590-420 E 3 and samples collected under subdivision B 6 a (2) (e) of this section, shall be first draw samples.

(b) Each first-draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First draw samples from residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap. First-draw samples from a nonresidential building shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption. Non-first-draw samples collected in lieu of first-draw samples pursuant to subdivision B 6 a (2) (e) of this section shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption. First

draw samples may be collected by the ~~waterworks~~ owner or the owner may allow residents to collect first draw samples after instructing the residents of the sampling procedures specified in this paragraph. To avoid problems of residents handling nitric acid, acidification of first draw samples may be done up to 14 days after the sample is collected. After acidification to resolubilize the metals, the sample must stand in the original container for the time specified in the approved EPA method before the sample can be analyzed. If an owner allows residents to perform sampling, the owner may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(c) Each lead service line sample collected pursuant to 12VAC5-590-420 E 3 for the purpose of avoiding replacement shall be one liter in volume and have stood motionless in the lead service line for at least six hours. Lead service line samples shall be collected in one of the following three ways:

(i) At the tap after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line;

(ii) Tapping directly into the lead service line; or

(iii) If the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

(d) ~~A waterworks~~ An owner shall collect each first draw tap sample from the same sampling site from which the owner collected a previous sample. If, for any reason, the owner cannot gain entry to a sampling site in order to collect a follow-up tap sample, the owner may collect the follow-up tap sample from another sampling site in the sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

(e) The owner of a nontransient noncommunity waterworks, or a community waterworks that meets the criteria of 12VAC5-590-420 F 3 g (1) and (2) that does not have enough taps that can supply first-draw samples, as defined in subdivision B 6 a (2) (b) of this section, may apply to the district engineer in writing to substitute non-first-draw samples. If approved by the commissioner, such owners ~~must~~ shall collect as many first-draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites.

(3) Number of samples. ~~Waterworks owners~~ Owners shall collect at least one sample during each monitoring period specified in subdivision B 6 a (4) of this section from the number of sites listed in the first column ("standard monitoring") of the table in this paragraph. The owner of a waterworks conducting reduced monitoring under subdivision B 6 a (4) (d) of this section shall collect at least one sample from the number of sites specified in the second column ("reduced monitoring") of the table in this paragraph during each monitoring period specified in subdivision B 6 a (4) (d) of this section. Such reduced monitoring sites shall be representative of the sites required for standard monitoring. The commissioner may specify sampling locations when ~~a waterworks~~ an owner is conducting reduced monitoring. The table is as follows:

System Size (Number of People Served)	Number of sites (Standard Monitoring)	Number of sites (Reduced Monitoring)
~~>~~greater than 100,000	100	50
10,001-100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
~~≤~~less than or equal to100	5	5

(4) Timing of monitoring.

(a) Initial tap sampling. The first six-month monitoring period for small ~~(serving }3,300~~ (serving less than 3,300 population), medium-size (serving 3,301 to 50,000 population) and large waterworks (serving ~~>~~greater than 50,000 population) shall be established by the commissioner.

(i) ~~All~~ Owners of all large waterworks shall monitor during two consecutive six-month periods.

(ii) ~~All~~ Owners of all small and medium-size waterworks shall monitor during each six-month monitoring period until: the waterworks exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements under 12VAC5-590-420 C, in which case the owner shall continue monitoring in accordance with subdivision B 6 a (4) (b) of this section, or the waterworks meets the lead and copper action levels during two consecutive six-month monitoring periods, in which case the owner may reduce monitoring in accordance with subdivision B 6 a (4) (d) of this section.

(b) Monitoring after installation of corrosion control and water supply (source water) treatment.

(i) The owner of any large waterworks ~~which~~ that installs optimal corrosion control treatment pursuant to 12VAC5-590-420 C 2 d (4) shall monitor during two consecutive six-month monitoring periods by the date specified in 12VAC5-590-420 C 2 d (5).

(ii) The owner of any small or medium-size waterworks ~~which~~ that installs optimal corrosion control treatment pursuant to 12VAC5-590-420 C 2 e (5) shall monitor during two consecutive six-month monitoring periods by the date specified in 12VAC5-590-420 C 2 e (6).

(iii) The owner of any waterworks ~~which~~ that installs source water treatment pursuant to 12VAC5-590-420 D 1 c shall monitor during two consecutive six-month monitoring periods by the date specified in 12VAC5-590-420 D 1 d.

(c) Monitoring after the commissioner specifies water quality parameter values for optimal corrosion control. After the commissioner specifies the values for water quality control parameters under 12VAC5-590-420 C 1 f, the ~~waterworks~~ owner shall monitor during each subsequent six-month monitoring period, with the first monitoring period to begin on the date the commissioner specifies the optimal values under 12VAC5-590-420 C 1 f.

(d) Reduced monitoring.

(i) The owner of a small or medium-size waterworks that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with subdivision B 6 a (3) of this section, and reduce the frequency of sampling to once per year.

(ii) The owner of any waterworks that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the commissioner under 12VAC5-590-420 C 1 f during each of two consecutive six-month monitoring periods may reduce the frequency of monitoring to once per year and to reduce the number of lead and copper samples in accordance with subdivision B 6 a (3) of this section if the owner receives written approval from the commissioner. The commissioner shall review monitoring, treatment, and other relevant information submitted by the ~~waterworks~~ owner in accordance with 12VAC5-590-530 D, and shall notify the ~~waterworks~~ owner in writing when a determination is made that the owner is eligible to commence reduced monitoring pursuant to this paragraph. The commissioner shall review, and where appropriate, revise its determination when the owner submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iii) The owner of a small or medium-size waterworks that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. ~~Any~~ The owner of any waterworks that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the commissioner under 12VAC5-590-420 C 1 f during three consecutive years of monitoring may reduce the frequency of monitoring from annually to once every three years if the owner receives written approval from the commissioner. The commissioner shall review monitoring, treatment, and other relevant information submitted by the owner in accordance with 12VAC5-590-530 D and shall notify the ~~waterworks~~ owner in writing when a determination is made that the owner is eligible to commence reduced monitoring pursuant to this paragraph. The commissioner shall review, and where appropriate, revise its determination when the owner submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iv) The owner of a waterworks that reduces the number and frequency of sampling shall collect these samples from representative sites included in the pool of targeted sampling sites identified in subdivision B 6 a (1) of this section. ~~Waterworks owners~~ Owners sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or September. For a nontransient noncommunity waterworks that does not operate during the months of June through September, the commissioner shall designate an alternate monitoring period that represents a time of normal operation for the waterworks.

(v) The owner of any waterworks that demonstrates for two consecutive six-month monitoring periods that the tap water lead level computed under 12VAC5-590-410 E 3 is less than or equal to 0.005 mg/L and the tap water copper level computed under 12VAC5-590-410 E 3 is less than or equal to 0.65 mg/L may reduce the number of samples in accordance with subdivision B 6 a (3) of this section and reduce the frequency of sampling to once every three calendar years.

(vi) The owner of a small or medium-size waterworks subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling in accordance with subdivision B 6 a (4) (c) of this section and collect the number of samples specified for standard monitoring under subdivision B 6 a (3) ~~of this section~~. Such ~~waterworks~~ owner shall also conduct water quality parameter monitoring in accordance with subdivision B 6 b (2), (3), or (4) of this section (as appropriate) during the monitoring period in which the action level is exceeded.

The owner of any such waterworks may resume annual monitoring for lead and copper at the tap at the reduced number of sites specified in subdivision B 6 a (3) of this section after it has completed two subsequent consecutive six-month rounds of monitoring that meet the criteria of subdivision B 6 a (4) (d) (i) of this section and/or may resume triennial monitoring for lead and copper at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either subdivision B 6 a (4) (d) (iii) or (v) of this section.

(vii) The owner of any waterworks subject to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the commissioner under 12VAC5-590-420 C 1 f for more than nine days in any six-month period specified in subdivision B 6 b (4) of this section shall conduct tap water sampling for lead and copper at the frequency specified in subdivision B 6 a (4) (c) of this section, collect the number of samples specified for standard monitoring under subdivision B 6 a (3) of this section, and shall resume monitoring for water quality parameters within the distribution system in accordance with subdivision B 6 b (4) of this section. The owner of such a waterworks may resume reduced monitoring for lead and copper at the tap and for water quality parameters within the distribution system under the following conditions:

((a)) The ~~waterworks~~ owner may resume annual monitoring for lead and copper at the tap at the reduced number of sites specified in subdivision B 6 a (3) of this section after completion of two subsequent six-month rounds of monitoring that meet the criteria of subdivision B 6 a (4) (d) (ii) of this section and the owner has received written approval from the commissioner that it is appropriate to resume reduced monitoring on an annual frequency.

((b)) The ~~waterworks~~ owner may resume triennial monitoring for lead and copper at the tap at the reduced number of sites after demonstration through subsequent rounds of monitoring that it meets the criteria of either subdivision B 6 a (4) (d) (iii) or (v) of this section and the owner has received written approval from the commissioner that it is appropriate to resume triennial monitoring.

((c)) The ~~waterworks~~ owner may reduce the number of water quality parameter tap water samples required in accordance with subdivision B 6 b (5) (a) of this section and the frequency with which it collects such samples in accordance with subdivision B 6 b (5) (b) of this section. The owner of such a waterworks may not resume triennial monitoring for water quality parameters at the tap until it demonstrates, in accordance with the requirements of subdivision B 6 b (5) (b) of this section, that it has requalified for triennial monitoring.

(viii) The owner of any waterworks subject to a reduced monitoring frequency under subdivision B 6 a (4) (d) of this section that either adds a new source of water or changes any water treatment shall inform the district engineer in writing in accordance with 12VAC5-590-530 D 1 c. The commissioner may require the ~~waterworks~~ owner to resume sampling in accordance with subdivision B 6 a (4) (c) of this section and collect the number of samples specified for standard monitoring under subdivision ~~B~~ 6 a (3) of this section or take other appropriate steps such as increased water quality parameter monitoring or re-evaluation of its corrosion control treatment given the potentially different water quality considerations.

(5) Additional monitoring by ~~waterworks~~ owner. The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the ~~waterworks~~ owner and the commissioner in making any determinations (i.e., calculating the 90th percentile lead or copper level) under this subpart.

(6) Invalidation of lead or copper tap water samples. A sample invalidated under this paragraph does not count toward determining lead or copper 90th percentile levels under 12VAC5-590-410 E or toward meeting the minimum monitoring requirements of subdivision B 6 a (3) of this section.

(a) The commissioner may invalidate a lead or copper tap water sample if at least one of the following conditions is met.

(i) The laboratory establishes that improper sample analysis caused erroneous results.

(ii) The commissioner determines that the sample was taken from a site that did not meet the site selection criteria of this section.

(iii) The sample container was damaged in transit.

(iv) There is substantial reason to believe that the sample was subject to tampering.

(b) The waterworks owner ~~must~~ shall report the results of all samples to the district engineer and all supporting documentation for samples the owner believes should be invalidated.

(c) To invalidate a sample under subdivision B 6 a (6) (a) of this section, the decision and the rationale for the decision ~~must~~ shall be documented in writing. The commissioner may not invalidate a sample solely on the grounds that a follow-up sample result is higher or lower than that of the original sample.

(d) The ~~waterworks~~ owner ~~must~~ shall collect replacement samples for any samples invalidated under this section if, after the invalidation of one or more samples, the owner has too few samples to meet the minimum requirements of subdivision B 6 a (3) of this section. Any such replacement samples ~~must~~ shall be taken as soon as possible, but no later than 20 days after the date the commissioner invalidates the sample or by the end of the applicable monitoring period, whichever occurs later. Replacement samples taken after the end of the applicable monitoring period shall not also be used to meet the monitoring requirements of a subsequent monitoring period. The replacement samples shall be taken at the same locations as the invalidated samples or, if that is not possible, at locations other than those already used for sampling during the monitoring period.

(7) Monitoring waivers for small ~~systems~~ waterworks. The owner of any small waterworks that meets the criteria of this section may apply to the commissioner to reduce the frequency of monitoring for lead and copper to once every nine years (i.e., a "full waiver") if the owner meets all of the materials criteria specified in subdivision B 6 a (7) (a) of this section and all of the monitoring criteria specified in subdivision B 6 a (7) (b) of this section. The owner of any small ~~system~~ waterworks that meets the criteria in subdivisions B 6 a (7) (a) and (b) of this section only for lead, or only for copper, may apply to the commissioner for a waiver to reduce the frequency of tap water monitoring to once every nine years for that contaminant only (i.e., a "partial waiver").

(a) Materials criteria. The ~~waterworks~~ owner ~~must~~ shall demonstrate that the distribution system and service lines and all drinking water supply plumbing, including plumbing conveying drinking water within all residences and buildings connected to the waterworks, are free of lead-containing materials and/or copper-containing materials, as those terms are defined in this paragraph, as follows:

(i) Lead. To qualify for a full waiver, or a waiver of the tap water monitoring requirements for lead (i.e., a "lead waiver"), the ~~waterworks~~ owner ~~must~~ shall provide certification and supporting documentation to the commissioner that the waterworks is free of all lead-containing materials, as follows:

((a)) It contains no plastic pipes that contain lead plasticizers, or plastic service lines that contain lead plasticizers; and

((b)) It is free of lead service lines, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless such fittings and fixtures meet the specifications of any standard established pursuant to 42 USC § 300g-6(e) (SDWA § 1417(e)).

(ii) Copper. To qualify for a full waiver, or a waiver of the tap water monitoring requirements for copper (i.e., a "copper waiver"), the ~~waterworks~~ owner ~~must~~ shall provide certification and supporting documentation to the commissioner that the waterworks contains no copper pipes or copper service lines.

(b) Monitoring criteria for waiver issuance. The ~~waterworks~~ owner ~~must~~ shall have completed at least one six-month round of standard tap water monitoring for lead and copper at sites approved by the commissioner and from the number of sites required by subdivision B 6 a (3) of this section and demonstrate that the 90th percentile levels for any and all rounds of monitoring conducted since the owner became free of all lead-containing and/or copper-containing materials, as appropriate, meet the following criteria.

(i) Lead levels. To qualify for a full waiver, or a lead waiver, the ~~waterworks~~ owner ~~must~~ shall demonstrate that the 90th percentile lead level does not exceed 0.005 mg/L.

(ii) Copper levels. To qualify for a full waiver, or a copper waiver, the ~~waterworks~~ owner ~~must~~ shall demonstrate that the 90th percentile copper level does not exceed 0.65 mg/L.

(c) Commissioner approval of waiver application. The commissioner shall notify the ~~waterworks~~ owner of ~~its~~ the waiver determination, in writing, setting forth the basis of its decision and any condition of the waiver. As a condition of the waiver, the commissioner may require the owner to perform specific activities (e.g., limited monitoring, periodic outreach to customers to remind them to avoid installation of materials that might void the waiver) to avoid the risk of lead or copper concentration of concern in tap water. The owner of a small waterworks ~~must~~ shall continue monitoring for lead and copper at the tap as required by subdivisions B 6 a (4) (a) through (d) of this section, as appropriate, until it receives written notification from the commissioner that the waiver has been approved.

(d) Monitoring frequency for waterworks owners with waivers.

(i) ~~A waterworks~~ An owner with a full waiver ~~must~~ shall conduct tap water monitoring for lead and copper in accordance with subdivision B 6 a (4) (d) (iv) of this section at the reduced number of sampling sites identified in subdivision B 6 a (3) of this section at least once every nine years and provide the materials certification specified in subdivision B 6 a (7) (a) of this section for both lead and copper to the commissioner along with the monitoring results.

(ii) ~~A waterworks~~ An owner with a partial waiver ~~must~~ shall conduct tap water monitoring for the waived

contaminant in accordance with subdivision B 6 a (4) (d) (iv) of this section at the reduced number of sampling sites specified in subdivision B 6 a (3) of this section at least once every nine years and provide the materials certification specified in subdivision B 6 a (7) (a) of this section pertaining to the waived contaminant along with the monitoring results. Such ~~a waterworks~~ an owner also ~~must~~ shall continue to monitor for the nonwaived contaminant in accordance with requirements of subdivisions B 6 a (4) (a) through (d) of this section, as appropriate.

(iii) If ~~a waterworks~~ an owner with a full or partial waiver adds a new source of water or changes any water treatment, the owner ~~must~~ shall notify the commissioner in writing in accordance with 12VAC5-590-530 D 1 c. The commissioner has the authority to require the owner to add or modify waiver conditions (e.g., require recertification that the waterworks is free of lead-containing and/or copper-containing materials require additional round(s) of monitoring), if it deems such modifications are necessary to address treatment or source water changes at the waterworks.

(iv) If ~~a waterworks~~ an owner with a full or partial waiver becomes aware that it is no longer free of lead-containing or copper-containing materials, as appropriate, (e.g., as a result of new construction or repairs), the owner shall notify the commissioner in writing no later than 60 days after becoming aware of such a change.

(e) Continued eligibility. If the ~~waterworks~~ owner continues to satisfy the requirements of subdivision B 6 a (7) (d) of this section, the waiver will be renewed automatically, unless any of the conditions listed in subdivisions (i), (ii), or (iii) of this ~~subdivision (e)~~ section occurs. ~~A waterworks~~ An owner whose waiver has been revoked may reapply for a waiver at such time as it again meets the appropriate materials and monitoring criteria of subdivisions B 6 a (7) (a) and (b) of this section.

(i) A waterworks ~~owner~~ with a full waiver or a lead waiver no longer satisfies the materials criteria of subdivision B 6 a (7) (a) (i) of this section or has a 90th percentile lead level greater than 0.005 mg/L.

(ii) A waterworks ~~owner~~ with a full waiver or a copper waiver no longer satisfies the materials criteria of subdivision B 6 a (7) (a) (ii) of this section or has a 90th percentile copper level greater than 0.65 mg/L.

(iii) The commissioner notifies the ~~waterworks~~ owner, in writing, that the waiver has been revoked, setting forth the basis of the decision.

(f) Requirements following waiver revocation. A waterworks ~~owner~~ whose full or partial waiver has been revoked by the commissioner is subject to the corrosion control treatment and lead and copper tap water monitoring requirements, as follows:

(i) If the waterworks ~~owner~~ exceeds the lead and/or copper action level, the owner ~~must~~ shall implement corrosion control treatment in accordance with the deadlines specified in 12VAC5-590-420 C 2 e and any other applicable requirements of this subpart.

(ii) If the waterworks ~~owner~~ meets both the lead and the copper action level, the owner ~~must~~ shall monitor for lead and copper at the tap no less frequently than once every three years using the reduced number of sample sites specified in subdivision B 6 a (3) of this section.

(g) Pre-existing waivers. Waivers for small waterworks approved by the commissioner in writing prior to April 11, 2000, shall remain in effect under the following conditions:

(i) If the waterworks ~~owner~~ has demonstrated that it is both free of lead-containing and copper-containing materials, as required by subdivision B 6 a (7) (a) of this section and that its 90th percentile lead levels and 90th percentile copper levels meet the criteria of subdivision B 6 a (7) (b) of this section, the waiver remains in effect so long as the owner continues to meet the waiver eligibility criteria of subdivision B 6 a (7) (e) of this section. The first round of tap water monitoring conducted pursuant to subdivision ~~B~~ 6 a (7) (d) of this section shall be completed no later than nine years after the last time the owner has monitored for lead and copper at the tap.

(ii) If the waterworks ~~owner~~ has met the materials criteria of subdivision B 6 a (7) (a) of this section but has not met the monitoring criteria of subdivision B 6 a (7) (b) of this section, the owner shall conduct a round of monitoring for lead and copper at the tap demonstrating that it meets the criteria of subdivision B 6 a (7) (b) of this section no later than September 30, 2000. Thereafter, the waiver shall remain in effect as long as the owner meets the continued eligibility criteria of subdivision B 6 a (7) (e) of this section. The first round of tap water monitoring conducted pursuant to subdivision B 6 a (7) (d) of this section shall be completed no later than nine years after the round of monitoring conducted pursuant to subdivision B 6 a (7) (b) of this section.

b. Monitoring requirements for water quality parameters. The owners of all large waterworks and all small and medium-size waterworks that exceed the lead or copper action level shall monitor water quality parameters in addition to lead and copper in accordance with this section. The requirements of this section are summarized in Appendix M.

(1) General requirements.

(a) Sample collection methods.

(i) Tap samples shall be representative of water quality throughout the distribution system taking into account the number of persons served, the different sources of water, the different treatment methods employed by the waterworks, and seasonal variability. Tap sampling under this section is not required to be conducted at taps targeted for lead and copper sampling under subdivision B 6 (a) (1) of this section. ~~Waterworks owners~~ Owners may find it convenient to conduct tap sampling for water quality parameters at sites approved for coliform sampling.

(ii) Samples collected at the entry point(s) to the distribution system shall be from locations representative of each source after treatment. If a waterworks draws water from more than one source and the sources are combined before distribution, the ~~waterworks~~ owner ~~must~~ shall sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(b) Number of samples.

(i) ~~Waterworks owners~~ Owners shall collect two tap samples for applicable water quality parameters during each monitoring period specified under subdivision ~~B~~ 6 b (2) through (5) of this section from the following number of sites.

System Size (Number of People Served)	Number of Sites for Water Quality Parameters
~~>~~greater than 100,000	25
10,001-100,000	10
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
~~≤~~less than or equal to 100	1

(ii) Except as provided in subdivision B 6 b (3) (c) of this section, ~~waterworks~~ owners shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in subdivision B 6 b (2) of this section. During each monitoring period specified in subdivision B 6 b (3) through (5) of this section, ~~waterworks~~ owners shall collect one sample for each applicable water quality parameter at each entry point to the distribution system.

(2) Initial sampling. The owners of all large waterworks shall measure the applicable water quality parameters as specified below at taps and at each entry point to the distribution system during each six-month monitoring period specified in subdivision B 6 a (4) (a) of this section. The owners of all small and medium-size waterworks shall measure the applicable water quality parameters at the locations specified below during each six-month monitoring period specified in subdivision B 6 a (4) (a) of this section during which the waterworks exceeds the lead or copper action level.

(a) At taps:

(i) pH;

(ii) alkalinity;

(iii) orthophosphate, when an inhibitor containing a phosphate compound is used;

(iv) silica, when an inhibitor containing a silicate compound is used;

(v) calcium;

(vi) conductivity; and

(vii) water temperature.

(b) At each entry point to the distribution system: all of the applicable parameters listed in subdivision B 6 b (2) (a) of this section.

(3) Monitoring after installation of corrosion control. The owner of any large waterworks which installs optimal corrosion control treatment pursuant to 12VAC5-590-420 C 2 d (4) shall measure the water quality parameters at the locations and frequencies specified below during each six-month monitoring period specified in subdivision B 6 a (4) (b) (i) of this section. The owner of any small or medium-size waterworks ~~which~~ that installs optimal corrosion control treatment shall conduct such monitoring during each six-month monitoring period specified in subdivision B 6 a (4) (b) (ii) of this section in which the waterworks exceeds the lead or copper action level.

(a) At taps, two samples for:

(i) pH;

(ii) alkalinity;

(iii) orthophosphate, when an inhibitor containing a phosphate compound is used;

(iv) silica, when an inhibitor containing a silicate compound is used;

(v) calcium, when calcium carbonate stabilization is used as part of corrosion control.

(b) Except as provided in subdivision B 6 b (3) (c) of this section, at each entry point to the distribution system, at least one sample no less frequently than every two weeks (bi-weekly) for:

(i) pH;

(ii) when alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and

(iii) when a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable).

(c) The owner of any ground water waterworks can limit entry point sampling described in subdivision B 6 b (3) (b) of this section to those entry points that are representative of water quality and treatment conditions throughout the waterworks. If water from untreated ground water sources mixes with water from treated ground water sources, the owner ~~must~~ shall monitor for water quality parameters both at representative entry points receiving treatment and representative entry points receiving no treatment. Prior to the start of any monitoring under this paragraph, the owner shall provide to the commissioner written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the waterworks.

(4) Monitoring after the commissioner specifies water quality parameter values for optimal corrosion control. After the commissioner specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under 12VAC5-590-420 C 1 f, the owners of all large waterworks shall measure the applicable water quality parameters in accordance with subdivision B 6 b (3) of this section and determine compliance with the requirements of 12VAC5-590-420 C 1 g every six months with the first six-month period to begin on the date the commissioner specifies the optimal values under 12VAC5-590-420 C 1 f. The owner of any small or medium-size waterworks shall conduct such monitoring during each six-month monitoring period specified in this subdivision in which the waterworks exceeds the lead or copper action level. For the owner of any such small and medium-size waterworks that is subject to a reduced monitoring frequency pursuant to subdivision B 6 a (4) (d) of this section at the time of the action level exceedance, the end of the applicable six-month period under this paragraph shall coincide with the end of the applicable monitoring period under subdivision B 6 a (4) (d) of this section. Compliance with the commissioner-designated optimal water quality parameter values shall be determined as specified under 12VAC5-590-420 C 1 g.

(5) Reduced monitoring.

(a) The owner of any waterworks that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under subdivision B 6 b (4) of this section shall continue monitoring at the entry point(s) to the distribution system as specified in subdivision B 6 b (3) (b) of this section. The owner of such waterworks may collect two tap samples for applicable water quality parameters from the following reduced number of sites during each six-month monitoring period.

Size of Water System (Number of People Served)	Reduced Number of WQP Monitoring Sites
≥ greater than 100,000	10
10,001 to 100,000	7
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
≤ less than or equal to 100	1

(b) The owner of any waterworks that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the commissioner under 12VAC5-590-420 C 1f during three consecutive years of monitoring may reduce the frequency with which the owner collects the number of tap samples for applicable water quality parameters specified in subdivision B 6 b (5) (a) of this section from every six months to annually. The owner of any waterworks that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the commissioner under 12VAC5-590-420 C 1 f during three consecutive years of annual monitoring under this paragraph may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in subdivision B 6 a (5) (a) of this section from annually to every three years.

(c) The owner of a waterworks may reduce the frequency with which tap samples are collected for applicable water quality parameters specified in subdivision B 6 b (5) (a) of this section to every three years if the owner demonstrates during two consecutive monitoring periods that the tap water lead level at the 90th percentile is less than or equal to the PQL for lead (0.005 mg/L), that the tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L for copper, and that the owner also has maintained the range of values for water quality parameters reflecting optimal corrosion control treatment specified by the commissioner under 12VAC5-590-420 C 1 f.

(d) The owner of a waterworks that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

(e) The owner of any waterworks subject to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the commissioner under 12VAC5-590-420 C 1 f for more than nine days in any six-month period specified in 12VAC5-590-420 C 1 g shall resume distribution system tap water sampling in accordance with the number and frequency requirements in subdivision B 6 b (4) of this section. Such ~~a waterworks~~ an owner may resume annual monitoring for water quality parameters at the tap at the reduced number of sites specified in subdivision B 6 b (5) of this section after completion of two subsequent consecutive six-month rounds of monitoring that meet the criteria of that subdivision and/or may resume triennial monitoring for water quality parameters at the tap at the reduced number of sites after demonstration through subsequent rounds of monitoring that the criteria of either subdivision B 6 b (5) (b) or (c) of this section has been met.

(6) Additional monitoring by ~~waterworks~~ owners. The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the ~~waterworks~~ owner and the commissioner in making any determinations under this section or 12VAC5-590-420 C 1.

c. Monitoring requirements for lead and copper in water supplies (source water).

(1) Sample location, collection methods, and number of samples.

(a) The owner of a waterworks that fails to meet the lead or copper action level on the basis of tap samples collected in accordance with subdivision B 6 a of this section shall collect lead and copper water supply samples in accordance with the following requirements regarding sample location, number of samples, and collection methods:

(i) The owner of a waterworks served by groundwater sources shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). The ~~waterworks~~ owner shall take one sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(ii) The owner of a waterworks served by surface water sources shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment (hereafter called a sampling point). The ~~waterworks~~ owner shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. Note that for the purpose of this paragraph, a waterworks served by a surface water source includes waterworks served by a combination of surface and ground sources.

(iii) If a waterworks draws water from more than one source and the sources are combined before distribution, the ~~waterworks~~ owner ~~must~~ shall collect samples at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(iv) The commissioner may reduce the total number of samples that must be analyzed by allowing the use of compositing. Compositing of samples ~~must~~ shall be done by certified laboratory personnel. Composite samples from a maximum of five samples are allowed, provided that if the lead concentration in the composite sample is greater than or equal to 0.001 mg/L or the copper concentration is greater than or equal to 0.160 mg/L, then either a follow-up sample shall be collected and analyzed within 14 days at each sampling point included in the composite or if duplicates of or sufficient quantities from the original samples from each sampling point used in the composite are available, the ~~waterworks~~ owner may use these instead of resampling.

(b) Where the results of sampling indicate an exceedance of maximum permissible water supply levels established under 12VAC5-590-420 D 4, the commissioner may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a commissioner required confirmation sample is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged in determining compliance with the commissioner-specified maximum permissible levels. Any sample value below the method detection limit shall be considered to be zero. Any value above the method detection limit but below the PQL shall either be considered as the measured value or be considered one-half the PQL. The PQL for Lead is equal to 0.005 ~~mg/l~~ mg/L and the PQL for Copper is equal to 0.050 ~~mg/l~~ mg/L.

(2) Monitoring frequency after waterworks exceeds tap action level. The owner of any waterworks which exceeds the lead or copper action level at the tap shall collect one water supply sample from each entry point to the distribution system within six months after the exceedance.

(3) Monitoring frequency after installation of water supply treatment. The owner of any waterworks which

installs water supply treatment pursuant to 12VAC5-590-420 D 1 c shall collect an additional water supply sample from each entry point to the distribution system during two consecutive six-month monitoring periods by the deadline specified in 12VAC5-590-420 D 1 d.

(4) Monitoring frequency after the commissioner specifies maximum permissible water supply lead and copper levels or determines that water supply treatment is not needed.

(a) ~~A waterworks~~ An owner shall monitor at the frequency specified below in cases where the commissioner specifies maximum permissible water supply lead and copper levels under 12VAC5-590-420 D 4 or determines that the owner is not required to install water supply treatment under 12VAC5-590-420 D 2 (b).

(i) The owner of a waterworks using only groundwater shall collect samples once during the three-year compliance period in effect when the applicable commissioner determination under subdivision B 6 c (4) (a) of this section is made. Owners of such waterworks shall collect samples once during each subsequent compliance period.

(ii) The owner of a waterworks using surface water (or a combination of surface and groundwater) shall collect samples once during each year, the first annual monitoring period to begin on the date on which the applicable commissioner determination is made under subdivision B 6 c (4) (a) of this section.

(b) ~~A waterworks~~ An owner is not required to conduct water supply sampling for lead and/or copper if the waterworks meets the action level for the specific contaminant in tap water samples during the entire water supply sampling period applicable to the waterworks under subdivision B 6 c (4) (a) (i) or (ii) of this section.

(5) Reduced monitoring frequency.

(a) The owner of a waterworks using only groundwater may reduce the monitoring frequency for lead and copper in water supplies to once during each nine-year compliance cycle if the ~~waterworks~~ owner meets one of the following criteria:

(i) The ~~waterworks~~ owner demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the commissioner under 12VAC5-590-420 D 4 during at least three consecutive compliance periods under subdivision B 6 c (4) (a) of this section; or

(ii) The commissioner has determined that water supply treatment is not needed and the ~~waterworks~~ owner demonstrates that, during the last three consecutive compliance periods in which sampling was conducted under subdivision B 6 c (4) (a) of this section, the concentration of lead in the water supply was less than or equal to 0.005 mg/L and the concentration of copper in the water supply was less than or equal to 0.65 mg/L.

(b) The owner of a waterworks using surface water (or a combination of surface and ground waters) may reduce the monitoring frequency for lead and copper in water supplies to once during each nine-year compliance cycle if the ~~waterworks~~ owner meets one of the following criteria:

(i) The ~~waterworks~~ owner demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the commissioner under 12VAC5-590-420 D 4 for at least three consecutive years; or

(ii) The commissioner has determined that water supply treatment is not needed and the ~~waterworks~~ owner demonstrates that, during the last three consecutive years, the concentration of lead in the water supply was less than or equal to 0.005 mg/L and the concentration of copper in the water supply was less than or equal to 0.65 mg/L.

(c) ~~A waterworks~~ Owners of a waterworks that uses a new water supply is not eligible for reduced monitoring for lead and/or copper until concentrations in samples collected from the new supply during three consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified ~~by the commissioner~~ in 12VAC5-590-420 D 1 e.

7. Monitoring filtration and disinfection.

a. The owner of a waterworks that uses a surface water source or a groundwater source under the direct influence of surface water and provides filtration treatment ~~must~~ shall monitor in accordance with this section beginning June 29, 1993, or when filtration is installed, whichever is later.

b. Turbidity measurements as required by ~~12VAC5-590-410 F~~ 12VAC5-590-370 C shall be performed on representative samples of the filtered water every four hours (or more frequently) that the waterworks serves water to the public. ~~A waterworks~~ An owner may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the ~~Office~~ commissioner. For any waterworks using slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the office may reduce the sampling frequency to once per day if it determines that less frequent monitoring is sufficient to indicate effective filtration performance. For waterworks

serving 500 or fewer persons, the ~~office~~ commissioner may reduce the turbidity sampling frequency to once per day, regardless of the type of filtration treatment used, if the ~~office~~ commissioner determines that less frequent monitoring is sufficient to indicate effective filtration performance.

(1) In addition to the above, as of January 1, 2001, waterworks serving at least 10,000 people and as of January 1, 2005, waterworks serving less than 10,000 people supplied by surface water or groundwater under the direct influence of surface water using conventional filtration treatment or direct filtration ~~must~~ shall conduct continuous monitoring of turbidity for each individual filter, using an approved method in 12VAC5-590-440. The turbidimeter ~~must~~ shall be calibrated using the procedure specified by the manufacturer. ~~Waterworks must~~ The owner shall record the results of individual filter turbidity monitoring every 15 minutes.

(2) If there is a failure in the continuous turbidity monitoring equipment, the ~~waterworks must~~ owner shall conduct grab sampling every four hours in lieu of continuous monitoring but for no more than five working days (for waterworks serving at least 10,000 people) or 14 days (for waterworks serving less than 10,000 people) following the failure of the equipment.

(3) If a waterworks serving less than 10,000 people consists of two or fewer filters, continuous monitoring of the combined filter effluent may be used in lieu of individual filter monitoring.

c. The residual disinfectant concentration of the water entering the distribution system shall be monitored continuously, and the lowest value shall be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment, and owners of waterworks serving 3,300 or fewer persons may take grab samples in lieu of continuous monitoring on an ongoing basis at the frequencies each day prescribed below:

Table 2.5
Grab Sample Monitoring Frequency

Waterworks Size By Population	Samples/Day[1]
500 or less	1
501 to 1,000	2
1,000 to 2,500	3
2,501 to 3,300	4

[1]The day's samples cannot be taken at the same time. The sampling intervals are subject to commissioner's review and approval. If at any time the residual disinfectant concentration falls below 0.2 mg/L in a waterworks using grab sampling in lieu of continuous monitoring, the waterworks owner shall take a grab sample every four hours until the residual disinfectant concentration is equal to or greater than 0.2 mg/L.

(1) The residual disinfectant concentration ~~must~~ shall be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in subsection A of this section, except that the ~~division~~ district engineer may allow ~~a waterworks~~ an owner which uses both a surface water source or a groundwater source under direct influence of surface water, and a groundwater source to take disinfectant residual samples at points other than the total coliform sampling points if the division determines that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in 12VAC5-590-420 B may be measured in lieu of residual disinfectant concentration.

(2) If the ~~office~~ commissioner determines, based on site-specific considerations, that a waterworks has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions and that the waterworks is providing adequate disinfection in the distribution system, the requirements of subdivision B 7 (1) of this section do not apply to that waterworks.

d. The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to 12VAC5-590-420 B shall be reported monthly to the ~~division~~ district engineer by the ~~waterworks~~ owner:

(1) Number of instances where the residual disinfectant concentration is measured;

(2) Number of instances where the residual disinfectant concentration is not measured but HPC is measured;

(3) Number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

(4) Number of instances where no residual disinfectant concentration is detected and where the HPC is greater than 500/mL;

(5) Number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/mL.

(6) For the current and previous month the waterworks serves water to the public, the value of "V" in percent in the following formula:

$V = (c + d + e) / (a + b) \times 100$

where

a = the value in subdivision B 7 d (1) of this section,

b = the value in subdivision B 7 d (2) of this section,

c = the value in subdivision B 7 d (3) of this section,

d = the value in subdivision B 7 d (4) of this section,

e = the value in subdivision B 7 d (5) of this section,

(7) If the ~~division~~ commissioner determines, based on site-specific considerations, that ~~a waterworks~~ an owner has no means for having a sample transported and analyzed for HPC by a certified laboratory within the requisite time and temperature conditions and that the waterworks is providing adequate disinfection in the distribution system, the requirements of subdivision B 7 c (1) of this section do not apply.

e. ~~A waterworks~~ An owner need not report the data listed in 12VAC5-590-530 C 2 a if all data listed in 12VAC5-590-530 C 2 a through c remain on file at the waterworks and the ~~division~~ district engineer determines that the ~~waterworks~~ owner has submitted all the information required by 12VAC5-590-530 C 2 a through c for at least 12 months.

8. Operational. ~~Waterworks owners~~ Owners may be required by the ~~division~~ commissioner to collect additional samples to provide quality control for any treatment processes that are employed.

C. Physical. All samples for turbidity analysis shall be taken at a representative entry point or points to the water distribution system unless otherwise specified. Turbidity samples shall be analyzed in accordance with 12VAC5-590-480 B 1 a, at least once per day at all waterworks that use surface water sources or groundwater sources under the direct influence of surface water.

D. Radiological. The location of sampling points, the radionuclides measured in community waterworks, the frequency, and the timing of sampling within each compliance period shall be established or approved by the commissioner. The commissioner may increase required monitoring where necessary to detect variations within the waterworks. Failure to comply with the sampling schedules in this section will require public notification pursuant to 12VAC5-590-540.

Community waterworks owners shall conduct monitoring to determine compliance with the PMCLs in Table 2.5 and 12VAC5-590-400 in accordance with this section.

1. Monitoring and compliance requirements for gross alpha particle activity, radium-226, radium-228, and uranium.

a. Community waterworks owners ~~must~~ shall conduct initial monitoring to determine compliance with 12VAC5-590-400 B 2, 12VAC5-590-400 B 3 and 12VAC5-590-400 B 4 by December 31, 2007. For the purposes of monitoring for gross alpha particle activity, radium-226, radium-228, uranium, and beta particle and photon radioactivity in drinking water, "detection limit" is defined as in Appendix B of this chapter.

(1) Applicability and sampling location for existing community waterworks or sources. The owners of all existing community waterworks using ground water, surface water or waterworks using both ground and surface water ~~must~~ shall sample at every entry point to the distribution system that is representative of all sources being used under normal operating conditions. The community waterworks owner ~~must~~ shall take each sample at the same entry point unless conditions make another sampling point more representative of each source.

(2) Applicability and sampling location for new community waterworks or sources. All new community waterworks or community waterworks that use a new source of water ~~must~~ shall begin to conduct initial monitoring for the new source within the first quarter after initiating use of the source. Community waterworks owners ~~must~~ shall conduct more frequent monitoring when directed by the commissioner in the event of possible contamination or when changes in the distribution system or treatment processes occur which may increase the concentration of radioactivity in finished water.

b. Initial monitoring: Community waterworks owners ~~must~~ shall conduct initial monitoring for gross alpha particle activity, radium-226, radium-228, and uranium as follows:

(1) Community waterworks without acceptable historical data, as defined below, ~~must~~ shall collect four consecutive quarterly samples at all entry points before December 31, 2007.

(2) Grandfathering of data: The commissioner may allow historical monitoring data collected at an entry point to satisfy the initial monitoring requirements for that entry point, for the following situations:

(a) To satisfy initial monitoring requirements, a community waterworks owner having only one entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003.

(b) To satisfy initial monitoring requirements, a community waterworks owner with multiple entry points and having appropriate historical monitoring data for each entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 2000 and December 8, 2003.

(3) For gross alpha particle activity, uranium, radium-226, and radium-228 monitoring, the commissioner may waive the final two quarters of initial monitoring for an entry point if the results of the samples from the previous two quarters are below the method detection limit specified in Appendix B.

(4) If the average of the initial monitoring results for an entry point is above the PMCL, the community waterworks owner ~~must~~ shall collect and analyze quarterly samples at that entry point until the ~~waterworks~~ owner has results from four consecutive quarters that are at or below the PMCL, unless the community waterworks owner enters into another schedule as part of a formal compliance agreement with the commissioner.

c. Reduced monitoring: The commissioner may allow community waterworks owners to reduce the future frequency of monitoring from once every three years to once every six or nine years at each entry point, based on the following criteria:

(1) If the average of the initial monitoring results for each contaminant (i.e., gross alpha particle activity, uranium, radium-226, or radium-228) is below the method detection limit specified in Appendix B, the community waterworks owner ~~must~~ shall collect and analyze for that contaminant using at least one sample at that entry point every nine years.

(2) For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is at or above the method detection limit specified in Appendix B but at or below 1/2 of the PMCL, the community waterworks owner ~~must~~ shall collect and analyze for that contaminant using at least one sample at that entry point every six years. For combined radium-226 and radium-228, the analytical results ~~must~~ shall be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is at or above the method detection limit specified in Appendix B but at or below 1/2 the PMCL, the community waterworks owner ~~must~~ shall collect and analyze for that contaminant using at least one sample at that entry point every six years.

(3) For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is above 1/2 the PMCL but at or below the PMCL, the community waterworks owner ~~must~~ shall collect and analyze at least one sample at that entry point every three years. For combined radium-226 and radium-228, the analytical results ~~must~~ shall be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is above 1/2 the PMCL but at or below the MPCL, the community waterworks owner ~~must~~ shall collect and analyze at least one sample at that entry point every three years.

(4) Community waterworks owners ~~must~~ shall use the samples collected during the reduced monitoring period to determine the monitoring frequency for subsequent monitoring periods (e.g., if a community waterworks' entry point is on a nine-year monitoring period, and the sample result is above 1/2 the PMCL, then the next monitoring period for that entry point is three years).

(5) If a community waterworks owner has a monitoring result that exceeds the PMCL while on reduced monitoring, the community waterworks owner ~~must~~ shall collect and analyze quarterly samples at that entry point until the community waterworks owner has results from four consecutive quarters that are below the PMCL, unless the community waterworks enters into another schedule as part of a formal compliance agreement with the commissioner.

d. Compositing: To fulfill quarterly monitoring requirements for gross alpha particle activity, radium-226, radium-228, or uranium, a community waterworks owner may composite up to four consecutive quarterly samples from a single entry point if analysis is done within a year of the first sample. The commissioner will treat analytical results from the composited sample as the average analytical result to determine compliance with the PMCLs and the future monitoring frequency. If the analytical result from the composited sample is greater than 1/2 the PMCL, the commissioner may direct the community waterworks owner to take additional quarterly samples before allowing the community waterworks owner to sample under a reduced monitoring schedule.

e. A gross alpha particle activity measurement may be substituted for the required radium-226 measurement provided that the measured gross alpha particle activity does not exceed 5 pCi/L. A gross alpha particle activity measurement may be substituted for the required uranium measurement provided that the measured gross alpha particle activity does not exceed 15 pCi/L.

The gross alpha measurement shall have a confidence interval of 95% (1.65, where is the standard deviation of the net counting rate of the sample) for radium-226 and uranium. When a community waterworks owner uses a gross alpha particle activity measurement in lieu of a radium-226 and/or uranium measurement, the gross alpha particle activity analytical result will be used to determine the future monitoring frequency for radium-226 and/or uranium. If the gross alpha particle activity result is less than the ~~method~~ detection limit as specified in Appendix B, 1/2 the ~~method~~ detection limit will be used to determine compliance and the future monitoring frequency.

2. Monitoring and compliance requirements for beta particle and photon radioactivity. To determine compliance

with the maximum contaminant levels in 12VAC5-590-400 B 5 for beta particle and photon radioactivity, a community waterworks owner ~~must~~ shall monitor at a frequency as follows:

a. Community waterworks owners (using surface or groundwater) designated by the commissioner as vulnerable ~~must~~ shall sample for beta particle and photon radioactivity. Community waterworks owners ~~must~~ shall collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 at each entry point to the distribution system, beginning within one quarter after being notified by the commissioner. Community waterworks already designated by the commissioner ~~must~~ shall continue to sample until the commissioner reviews and either reaffirms or removes the designation.

(1) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at an entry point has a running annual average (computed quarterly) less than or equal to 50 pCi/L (screening level), the commissioner may reduce the frequency of monitoring at that entry point to once every three years. Community waterworks owners ~~must~~ shall collect all samples required in subdivision 2 a of this subsection during the reduced monitoring period.

(2) For community waterworks in the vicinity of a nuclear facility, the commissioner may allow the community waterworks owners to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the community waterworks' entry point(s), where the commissioner determines if such data is applicable to a particular community waterworks. In the event that there is a release from a nuclear facility, community waterworks owners which are using surveillance data ~~must~~ shall begin monitoring at the community waterworks' entry point(s) in accordance with subdivision 2 a of this subsection.

b. Community waterworks owners (using surface or groundwater) designated by the commissioner as utilizing waters contaminated by effluents from nuclear facilities ~~must~~ shall sample for beta particle and photon radioactivity. Community waterworks owners ~~must~~ shall collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system, beginning within one quarter after being notified by the commissioner. Owners of community waterworks already designated by the commissioner as using waters contaminated by effluents from nuclear facilities ~~must~~ shall continue to sample until the commissioner reviews and either reaffirms or removes the designation.

(1) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three monthly samples. The former is recommended.

(2) For iodine-131, a composite of five consecutive daily samples shall be analyzed once each quarter. As directed by the commission, more frequent monitoring shall be conducted when iodine-131 is identified in the finished water.

(3) Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples. The latter procedure is recommended.

(4) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 15 pCi/L (screening level), the commissioner may reduce the frequency of monitoring at that sampling point to every three years. Community waterworks owners ~~must~~ shall collect all samples required in subdivision 2 b of this subsection during the reduced monitoring period.

(5) For community waterworks in the vicinity of a nuclear facility, the commissioner may allow the community waterworks owner to utilize environmental surveillance data collected by the nuclear facility in lieu of the monitoring at the community waterworks' entry point(s), where the commissioner determines such data is applicable to a particular waterworks. In the event that there is a release from a nuclear facility, community waterworks owners which are using surveillance data ~~must~~ shall begin monitoring at the community waterworks' entry point(s) in accordance with subdivision 2 b of this subsection.

c. Owners of community waterworks designated by the commissioner to monitor for beta particle and photon radioactivity can not apply to the commissioner for a waiver from the monitoring frequencies specified in subdivision 2 a or b of this subsection.

d. Community waterworks owners may analyze for naturally occurring potassium-40 beta particle activity from the same or equivalent sample used for the gross beta particle activity analysis. Community waterworks owners are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity ~~must~~ shall be calculated by multiplying elemental potassium concentrations (in ~~mg/l)~~ mg/L) by a factor of 0.82.

e. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the appropriate screening level, an analysis of the sample ~~must~~ shall be performed to identify the major radioactive constituents present in the sample and the appropriate

doses ~~must~~ shall be calculated and summed to determine compliance with 12VAC5-590-400 B 5 a, using the formula in 12VAC590-400 B 5 b. Doses ~~must~~ shall also be calculated and combined for measured levels of tritium and strontium to determine compliance.

f. Community waterworks owners ~~must~~ shall monitor monthly at the entry point(s) which exceed the maximum contaminant level in 12VAC5-590-400 B 5 beginning the month after the exceedance occurs. Community waterworks owners ~~must~~ shall continue monthly monitoring until the community waterworks has established, by a rolling average of three monthly samples, that the PMCL is being met. Community waterworks owners who establish that the PMCL is being met ~~must~~ shall return to quarterly monitoring until they meet the requirements set forth in subdivision 2 a (1) or 2 b (4) of this subsection.

3. General monitoring and compliance requirements for radionuclides.

a. The commissioner may require more frequent monitoring than specified in subdivisions 1 and 2 of this subsection, or may require confirmation samples at his discretion. The results of the initial and confirmation samples ~~will~~ shall be averaged for use in compliance determinations.

b. Each community waterworks owner shall monitor at the time designated by the commissioner during each compliance period.

c. Compliance: Compliance with 12VAC5-590-400 B 2 through 12VAC5-590-400 B 5 will be determined based on the analytical results(s) obtained at each entry point. If one entry point is in violation of a PMCL, the community waterworks is in violation of the PMCL.

(1) For community waterworks monitoring more than once per year, compliance with the PMCL is determined by a running annual average at each entry point. If the average of any entry point is greater than the PMCL, then the community waterworks is out of compliance with the PMCL.

(2) For community waterworks monitoring more than once per year, if any sample result will cause the running average to exceed the PMCL at any entry point, the community waterworks is out of compliance with the PMCL immediately.

(3) Community waterworks owners ~~must~~ shall include all samples taken and analyzed under the provisions of this section in determining compliance, even if that number is greater than the minimum required.

(4) If a community waterworks owner does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

(5) If a sample result is less than the method detection limit as specified in Appendix B, zero will be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium-226 and/or uranium. If the gross alpha particle activity result is less than the method detection limit as specified in Appendix B, 1/2 the method detection limit will be used to calculate the annual average.

d. The commissioner has the discretion to delete results of obvious sampling or analytic errors.

e. If the PMCL for radioactivity set forth in 12VAC5-590-400 B through 12VAC5-590-400 B 5 is exceeded, the owner of a community waterworks ~~must~~ shall give notice to the commissioner pursuant to 12VAC5-590-530 and to the public as required by 12VAC5-590-540.

12VAC5-590-410. Determination of compliance.

For the purposes of determining compliance with a PMCL or action level, the following criteria shall be used:

A. Bacteriological results. Compliance with the PMCL for coliform bacteria shall be determined as specified in 12VAC5-590-380 C. Repeat samples shall be used as a basis for determining compliance with these regulations.

B. Inorganic chemicals.

1. Antimony, arsenic, asbestos, barium, beryllium, cadmium, cyanide (as free cyanide), chromium, fluoride, mercury, nickel, selenium, and thallium. Where the results of sampling for antimony, arsenic, asbestos, barium, beryllium, cadmium, cyanide (as free cyanide), chromium, fluoride, mercury, nickel, selenium, or thallium exceed the PMCL, the ~~waterworks~~ owner shall take a confirmation sample, at the same sampling point, within two weeks of notification of the analytical results of the first sample.

a. The results of the initial and confirmation samples shall be averaged to determine compliance with subdivision B 1 c of this subsection. The commissioner has the discretion to delete results of obvious sampling errors.

b. The commissioner may require more frequent monitoring.

c. Compliance with antimony, arsenic, asbestos, barium, beryllium, cadmium, cyanide (as free cyanide), chromium, fluoride, mercury, nickel, selenium, and thallium in Table 2.2 of 12VAC5-590-440 shall be determined based on the analytical result(s) obtained at each sampling point.

(1) ~~For waterworks which~~ Owners that are conducting monitoring more frequently than annually, compliance

with the PMCL for antimony, arsenic, asbestos, barium, beryllium, cadmium, cyanide (as free cyanide), chromium, fluoride, mercury, nickel, selenium, and thallium is determined by a running annual average at each sampling point. If the average at any sampling point is greater than the PMCL, then the waterworks is out of compliance. If any one sample would cause the annual average to be exceeded, then the waterworks is out of compliance immediately. Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average. If ~~a waterworks~~ an owner fails to collect the required number of samples, compliance (average concentration) shall be based on the total number of samples collected.

(2) ~~For waterworks which~~ Owners that are monitoring annually, or less frequently, the waterworks is out of compliance with the PMCL for antimony, arsenic, asbestos, barium, beryllium, cadmium, cyanide (as free cyanide), chromium, fluoride, mercury, nickel, selenium, and thallium if the average of the original sample and a confirmation sample of a contaminant at any sampling point is greater than the PMCL. ~~Waterworks~~ Owners of waterworks monitoring annually or less frequently whose sample result exceeds the PMCL ~~must~~ shall begin quarterly sampling. The waterworks shall not be considered in violation of the PMCL until it has completed one year of quarterly sampling. However, if the confirmation sample is not collected, the waterworks is in violation of the PMCL for antimony, arsenic, asbestos, barium, beryllium, cadmium, cyanide (as free cyanide), chromium, fluoride, mercury, nickel, selenium, or thallium. If ~~a waterworks~~ an owner fails to collect the required number of samples, compliance (average concentration) shall be based on the total number of samples collected.

2. Nitrate and nitrite. Compliance with the PMCL is determined based on one sample from each sampling point if the levels of these contaminants are below the PMCLs. Where nitrate or nitrite sample results exceed the PMCL, the ~~waterworks~~ owner shall take a confirmation sample from the same sampling point that exceeded the PMCL within 24 hours of the ~~waterworks'~~ owner's receipt of the analytical results of the first sample. The results of the initial and confirmation sample shall be averaged to determine compliance with this subdivision. ~~Waterworks owners~~ Owners unable to comply with the 24-hour sampling requirement ~~must~~ shall immediately notify the consumers in the area served by the waterworks in accordance with 12VAC5-590-540. ~~Waterworks~~ Owners exercising this option ~~must~~ shall take and analyze a confirmation sample within two weeks of notification of the analytical results of the first sample. The commissioner may require more frequent monitoring. The commissioner has the discretion to delete results of obvious sampling errors.

C. Organic chemicals.

1. VOCs and SOCs. A confirmation sample shall be required for positive results for contaminants listed in Table 2.3. The commissioner has the discretion to delete results of obvious sampling errors from this calculation.

a. The results of the initial and confirmation sample shall be averaged to determine the waterworks' compliance in accordance with subdivision C 1 b of this subsection.

b. Compliance with Table 2.3 shall be determined based on the analytical results obtained at each sampling point. Any samples below the detection limit shall be calculated as zero for the purposes of determining the annual average. (Note: Refer to detection definition at 12VAC5-590-370 B 2 h.) If ~~a waterworks~~ an owner fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

(1) ~~For waterworks which~~ Owners that are conducting monitoring more frequently than annually, compliance is determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the PMCL, then the waterworks is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the waterworks is out of compliance immediately. Any samples below the detection limit shall be calculated as zero for purposes of determining the annual average. (Note: Refer to detection definition at 12VAC5-590-370 B 2 h.)

(2) If monitoring is conducted annually, or less frequently, the waterworks is not in violation if the average of the initial and confirmation ~~sample~~ sample is greater than the PMCL for that contaminant; however, the ~~waterworks must~~ owner shall begin quarterly sampling. The waterworks will not be considered in violation of the PMCL until ~~it~~ the owner has completed one year of quarterly sampling. If any sample will cause the running annual average to exceed the PMCL at any sampling point, the waterworks is immediately out of compliance with the PMCL.

2. Disinfectant residuals, disinfection byproducts and disinfection byproduct precursors. Compliance with 12VAC5-590-370 B 3 a through B 3 k is as follows:

a. General requirements.

(1) Where compliance is based on a running annual average of monthly or quarterly samples or averages and the ~~waterworks~~ owner fails to monitor for TTHM, HAA5, or bromate, this failure to monitor will be treated as a monitoring violation for the entire period covered by

the annual average. Where compliance is based on a running annual average of monthly or quarterly samples or averages and the ~~waterworks'~~ owner's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor ~~will~~ shall be treated as a monitoring violation for the entire period covered by the annual average.

(2) All samples taken and analyzed under the provisions of this subpart ~~must~~ shall be included in determining compliance, even if that number is greater than the minimum required.

(3) If during the first year of monitoring under 12VAC5-590-370 B 3 b, any individual quarter's average will cause the running annual average of that waterworks to exceed the PMCL in Table 2.12 and Table 2.13, the waterworks is out of compliance at the end of that quarter.

b. Disinfection byproducts.

(1) TTHMs and HAA5.

(a) Running Annual Average. All waterworks using surface water or groundwater under the direct influence of surface water serving 10,000 or more persons shall comply with this section beginning January 1, 2002. All waterworks using surface water or groundwater under the direct influence of surface water serving less than 10,000 persons and all waterworks using groundwater not under the direct influence of surface water shall comply with this section beginning January 1, 2004. All waterworks shall comply with this section until the dates listed in 12VAC5-590-370 B e (3) (c).

~~(a)~~ (i) For waterworks monitoring quarterly, compliance with PMCLs in Table 2.13 ~~must~~ shall be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the ~~waterworks~~ owner as prescribed by 12VAC5-590-370 B 3 e (1).

~~(b)~~ (ii) For waterworks monitoring less frequently than quarterly, the ~~waterworks demonstrate~~ owner demonstrates PMCL compliance if the average of samples taken that year under the provisions of 12VAC5-590-370 B 3 e (1) does not exceed the PMCLs in Table 2.13. If the average of these samples exceeds the PMCL, the ~~waterworks must~~ owner shall increase monitoring to once per quarter per treatment plant and such a waterworks is not in violation of the PMCL until it has completed one year of quarterly monitoring, unless the result of fewer then four quarter of monitoring will cause the running annual average to exceed the PMCL, in which case the waterworks is in violation at the end of that quarter. ~~Waterworks~~ Owners of waterworks required to increase monitoring frequency to quarterly monitoring ~~must~~ shall calculate compliance by including the sample that triggered the increase monitoring plus the following three quarter of monitoring.

~~(c)~~ (iii) If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the PMCL in Table 2.12 and Table 2.13, the waterworks is in violation of the PMCL and ~~must~~ the owner shall notify the public pursuant to 12VAC5-590-540 in addition to reporting to the commissioner pursuant to 12VAC5-590-530.

~~(d)~~ (iv) If ~~a waterworks~~ an owner fails to complete four consecutive quarters of monitoring, compliance with the PMCL in Table 2.13 for the last four-quarter compliance period ~~must~~ shall be based on an average of the available data.

(b) Locational Running Annual Average (LRAA). All waterworks shall comply with this section beginning on the dates listed in 12VAC5-590-370 B e (3) (c).

(i) Owners of waterworks required to monitor quarterly shall calculate LRAAs for TTHM and HAA5 using monitoring results collected under 12VAC5-590-370 B 3 e (3) and determine that each LRAA does not exceed the PMCL in order to comply with PMCLs in Table 2.13. If the owner fails to complete four consecutive quarters of monitoring, the owner shall calculate compliance with the PMCL based on the average of the available data from the most recent four quarters. If the owner takes more than one sample per quarter at a monitoring location, the owner shall average all samples taken in the quarter at that location to determine a quarterly average to be used in the LRAA calculation.

(ii) Owners of waterworks required to monitor yearly or less frequently shall determine that each sample taken is less than the PMCL in order to determine compliance with PMCLs in Table 2.13. If any sample exceeds the PMCL, the owner shall comply with the requirements of 12VAC5–590-370 B 3 e (3) (g). If no sample exceeds the PMCL, the sample result for each monitoring location is considered the LRAA for that monitoring location.

(iii) Waterworks are in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if the owner fails to monitor.

(iv) Waterworks have exceeded the operational evaluation level at any monitoring location where the sum of the two previous quarters' TTHM results plus twice the current quarter's TTHM result, divided by four to determine an average, exceeds 0.080 mg/L, or where the sum of the two previous quarters' HAA5 results plus twice the current quarter's HAA5 result, divided by four to determine an average, exceeds 0.060 mg/L.

((a)) Owners of waterworks that exceed the operational evaluation level shall conduct an operational evaluation and submit a written report of the evaluation to the commissioner no later than 90 days after being notified of the analytical result that causes the waterworks to exceed the operational evaluation level. The written report shall be made available to the public upon request.

((b)) The operational evaluation report shall include an examination of waterworks treatment and distribution operational practices, including storage tank operations, excess storage capacity, distribution system flushing, changes in sources or source water quality, and treatment changes or problems that may contribute to TTHM and HAA5 formation and what steps could be considered to minimize future exceedances.

((c)) The owner may request and the commissioner may allow waterworks to limit the scope of the evaluation if the owner is able to identify the cause of the operational evaluation level exceedance. The request to limit the scope of the evaluation does not extend the schedule in paragraph ((a)) of this section for submitting the written report. The commissioner shall approve this limited scope of evaluation in writing and the owner shall keep that approval with the completed report.

(2) Bromate. Compliance ~~must~~ shall be based on a running annual arithmetic average, computed quarterly, of monthly samples (or, for months in which the waterworks takes more than one sample, the average of all samples taken during the month) collected by the ~~waterworks~~ owner as prescribed by 12VAC5-590-370 B 3 g. If the average of samples covering any consecutive four-quarter period exceeds the PMCL in Table 2.13, the waterworks is in violation of the PMCL and ~~must~~ the owner shall notify the public pursuant to 12VAC5-590-540, in addition to reporting to the commissioner pursuant to 12VAC5-590-530. If ~~a waterworks~~ an owner fails to complete 12 consecutive months' monitoring, compliance with the PMCL for the last four-quarter compliance period ~~must~~ shall be based on an average of the available data.

(3) Chlorite. Compliance ~~must~~ shall be based on an arithmetic average of each three sample set taken in the distribution system as prescribed by 12VAC5-590-370 B 3 f (1) (a), (b) and (c). If the arithmetic average of any three sample set exceeds the PMCL in Table 2.13, the waterworks is in violation of the PMCL and ~~must~~ the owner shall notify the public pursuant to 12VAC5-590-540, in addition to reporting to the commissioner pursuant to 12VAC5-590-530.

c. Disinfectant residuals.

(1) Chlorine and chloramines.

(a) Compliance ~~must~~ shall be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the waterworks under 12VAC5-590-370 B 3 h (1) (a). If the average covering any consecutive four-quarter period exceeds the MRDL in Table 2.12, the waterworks is in violation of the MRDL and ~~must~~ the owner shall notify the public pursuant to 12VAC5-590-540, in addition to reporting to the commissioner pursuant to 12VAC5-590-530.

(b) In cases where waterworks switch between the use of chlorine and chloramines for residual disinfection during the year, compliance ~~must~~ shall be determined by including together all monitoring results of both chlorine and chloramines in calculating compliance. Reports submitted pursuant to 12VAC5-590-530 ~~must~~ shall clearly indicate which residual disinfectant was analyzed for each sample.

(2) Chlorine dioxide.

(a) Acute violations. Compliance ~~must~~ shall be based on consecutive daily samples collected by the ~~waterworks~~ owner under 12VAC5-590-370 B 3 h (2) (a). If any daily sample taken at the entrance to the distribution system exceeds the MRDL in Table 2.12, and on the following day one (or more) of the three samples taken in the distribution system exceed the MRDL, the waterworks is in violation of the MRDL and ~~must~~ the owner shall take immediate corrective action to lower the level of chlorine dioxide below the MRDL and ~~must~~ the owner shall notify the public pursuant to the procedures for Tier 1 conditions in 12VAC5-590-540 in addition to reporting to the commissioner in pursuant to 12VAC5-590-530. Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system will also be considered an MRDL violation and ~~the waterworks must~~ the owner shall notify the public of the violation in accordance with the provisions for Tier 1 conditions in 12VAC5-590-540 in addition to reporting to the commissioner in pursuant to 12VAC5-590-530.

(b) Nonacute violations. Compliance ~~must~~ shall be based on consecutive daily samples collected by the ~~waterworks~~ owner under 12VAC5-590-370 B 3 h (2) (a). If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL in Table 2.12 and all distribution system samples taken are below the MRDL, the waterworks is in violation of the MRDL and ~~must~~ the owner shall take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and shall notify the public pursuant to the procedures for Tier 2 conditions in 12VAC5-590-540 in addition to reporting to the commissioner in pursuant to 12VAC5-590-530. Failure to monitor at the entrance to the distribution system the day following an

exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation and the ~~waterworks must~~ owner shall notify the public of the violation in accordance with the provisions for Tier 2 conditions in 12VAC5-590-540 in addition to reporting to the commissioner in pursuant to 12VAC5-590-530.

d. Disinfection byproduct precursors (DBPP). Compliance ~~must~~ shall be determined as specified by 12VAC5-590-420 H 3. ~~Waterworks~~ Owners may begin monitoring to determine whether Step 1 TOC removals can be met 12 months prior to the compliance date for the waterworks. This monitoring is not required and failure to monitor during this period is not a violation. However, any ~~waterworks~~ owner that does not monitor during this period, and then determines in the first 12 months after the compliance date that it is not able to meet the Step 1 requirements in 12VAC5-590-420 H 2 b and ~~must~~ shall therefore apply for alternate minimum TOC removal (Step 2) requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements as allowed pursuant to 12VAC5-590-420 H 2 c and is in violation. ~~Waterworks~~ Owners may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date. For waterworks required to meet Step 1 TOC removals, if the value calculated under 12VAC5-590-420 H 3 a (4) is less than 1.00, the waterworks is in violation of the treatment technique requirements and ~~must~~ the owner shall notify the public pursuant to 12VAC5-590-540 in addition to reporting to the commissioner pursuant to 12VAC5-90-530.

D. Radiological results (gross alpha, combined radium-226 and radium-228, uranium and man-made radioactivity). Compliance with the radiological ~~Primary Maximum Contaminant Levels~~ PMCLs shall be in accordance with 12VAC5-590-370 D 3 c. ~~Primary Maximum Contaminant Levels~~ PMCLs are indicated in subsection B of Table 2.5. Sampling for radiological analysis shall be in compliance with 12VAC5-590-370 D 1 and D 2. Furthermore, compliance shall be determined by rounding off results to the same number of significant figures as the PMCL for the substance in question.

E. Lead and copper action levels.

1. The lead action level is exceeded if the concentration of lead in more than 10% of tap water samples collected during any monitoring period conducted in accordance with 12VAC5-590-370 B 6 a is greater than 0.015 ~~mg/l~~ mg/L (i.e., if the "90th percentile" lead level is greater than 0.015 ~~mg/l)~~ mg/L).

2. The copper action level is exceeded if the concentration of copper in more than 10% of tap water samples collected during any monitoring period conducted in accordance with 12VAC5-590-370 B 6 a is greater than 1.3 ~~mg/l~~ mg/L (i.e., if the "90th percentile" copper level is greater than 1.3 ~~mg/l)~~ mg/L).

3. The 90th percentile lead and copper levels shall be computed as follows:

a. The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

b. The number of samples taken during the monitoring period shall be multiplied by 0.9.

c. The contaminant concentration in the numbered sample yielded by the calculation in subdivision 3 b of this subsection is the 90th percentile contaminant level.

d. For waterworks serving fewer than 100 people that collect five samples per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentrations.

F. Turbidity. The requirements in this subsection apply to filtered waterworks until June 29, 1993. The requirements in this section apply to unfiltered waterworks with surface water sources or groundwater sources under the direct influence of surface water that are required to install filtration equipment until June 29, 1993, or until filtration is installed, whichever is later. When a sample exceeds the PMCL for turbidity a confirmation sample shall be collected for analysis as soon as possible. In cases where a turbidimeter is required at the waterworks, the preferable resampling time is within one hour of the initial sampling. The repeat sample shall be the sample used for the purpose of calculating the monthly average. Compliance for public notification purposes shall be based on the monthly averages of the daily samples. However, public notification is also required if the average of samples taken on two consecutive days exceeds five NTU.

G. All analyses for PMCL and action level compliance determinations shall be consistent with current Environmental Protection Agency Regulations found at 40 CFR Part 141.

12VAC5-590-420. Treatment technique requirement.

This section establishes treatment technique requirements in lieu of maximum contaminant levels for specified contaminants. Failure to meet any requirement of this section after the applicable date specified is a treatment technique violation.

A. ~~Beginning June 29, 1993, the~~ The filtration and disinfection provisions of this section are required treatment

techniques for any waterworks supplied by a surface water source and waterworks supplied by a groundwater source under the direct influence of surface water. ~~Prior to that date, waterworks are governed by the disinfection requirements of 12VAC5-590-500. In addition, this~~ This section establishes treatment technique requirements in lieu of PMCL's for the following contaminants: Giardia lamblia, viruses, heterotrophic bacteria (HPC), Legionella, Cryptosporidium ~~(for waterworks serving at least 10,000 people and using surface water or groundwater under the direct influence of surface water),~~ and turbidity. Each waterworks with a surface water source or a groundwater source under the direct influence of surface water shall provide treatment of that source water that complies with these treatment technique requirements. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

1. At least 99.9% (3-log) removal and/or inactivation of Giardia lamblia cysts between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer; and

2. At least 99.99% (4-log) removal and/or inactivation of viruses between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer~~.~~; and

3. ~~Beginning January 1, 2002, waterworks serving at least 10,000 people shall also reliably achieve at~~ At least 99% (2-log) removal of Cryptosporidium between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

~~4. Beginning January 1, 2005, waterworks serving less than 10,000 people shall also reliably achieve at least 99% (2-log) removal of *Cryptosporidium* between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.~~

B. A waterworks using a surface water source or a groundwater source under the direct influence of surface water is considered to be in compliance with the requirements of subsection A of this section if it meets the following disinfection ~~and,~~ filtration and enhanced filtration and disinfection for Cryptosporidium requirements:

1. Disinfection. Waterworks with a surface water source or a groundwater source under the direct influence of surface water ~~must~~ shall provide disinfection treatment in accordance with this section ~~by June 29, 1993~~.

a. The disinfection treatment ~~must~~ shall be sufficient to ensure that the total treatment processes of that waterworks achieve at least 99.9% (3-log) inactivation and/or removal of Giardia lamblia cysts and at least 99.99% (4-log) inactivation and/or removal of viruses.

b. The residual disinfectant concentration in the water entering the distribution system cannot be less than 0.2 mg/L for more than four hours.

c. The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide cannot be undetectable in more than 5.0% of the samples each month, for any two consecutive months that the waterworks serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/mL, measured as heterotrophic plate count (HPC) is deemed to have a detectable disinfectant residual for purposes of determining compliance with this requirement. Thus, the value "V" in percent in the following formula cannot exceed 5.0% in one month, for any two consecutive months.

$V = (c + d + e) / (a + b) \text{ X } 100$

a = number of instances where the residual disinfectant concentration is measured;

b = number of instances where the residual disinfectant concentration is not measured but HPC is measured;

c = number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

d = number of instances where no residual disinfectant concentration is detected and where the HPC is greater than 500/mL; and

e = number of instances where the residual disinfectant concentration s not measured and HPC is greater than 500/mL.

d. The ~~division~~ commissioner may determine, based on site-specific considerations, that ~~a waterworks~~ an owner has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions and the waterworks is providing adequate disinfection in the distribution system, that the requirements of subdivision B 1 c of this section does not apply.

2. Filtration. (Also see 12VAC5-590-880.) All waterworks that use a surface water source or a groundwater source under the direct influence of surface water shall provide filtration treatment ~~by June 29, 1993,~~ by using one of the following methods:

a. Conventional filtration or direct filtration. ~~Beginning January 1, 2002, waterworks serving at least 10,000 people and January 1, 2005, waterworks serving less than 10,000 people using conventional filtration treatment or direct filtration must:~~

(1) Achieve a filtered water turbidity of less than or equal to 0.3 NTU in at least 95% of the measurements taken

each month. Samples ~~must~~ shall be representative of the waterworks' filtered water.

(2) The turbidity level of representative samples of a system's filtered water ~~must~~ shall at no time exceed 1 NTU, measured as specified in 12VAC5-590-440.

(3) A system that uses lime softening may acidify representative samples prior to analysis using a protocol approved by the commissioner.

b. Slow sand filtration.

(1) The turbidity level of representative samples of a waterworks' filtered water ~~must~~ shall be less than or equal to one NTU in at least 95% of the measurements taken each month, except that if the ~~division~~ commissioner determines there is no significant interference with disinfection at a higher turbidity level, the ~~division~~ commissioner may substitute this higher turbidity limit for that waterworks.

(2) The turbidity level of representative samples of a waterworks' filtered water shall at no time exceed five NTU.

c. Diatomaceous earth filtration.

(1) The turbidity level of representative samples of a waterworks' filtered water shall be less than or equal to one NTU in at least 95% of the measurements taken each month.

(2) The turbidity level of representative samples of a waterworks' filtered water shall at no time exceed five NTU.

d. Other filtration technologies. ~~A waterworks~~ An owner may use a filtration technology not listed in subdivisions 2 a through c of this subsection if the owner demonstrates to the ~~division~~ commissioner (by pilot plant studies or other means) that the alternative filtration technology, in combination with disinfection treatment, achieves 99.9% removal (3-log) and/or inactivation of Giardia lamblia cysts, 99.99% removal (4-log) and/or inactivation of viruses, and 99% removal (2-log) of Cryptosporidium oocysts. For ~~a waterworks~~ an owner that makes this demonstration, a turbidity limit of representative samples of a waterworks' filtered water, not to exceed 0.3 NTU, ~~will~~ shall be established by the commissioner, which the waterworks must meet at least 95% of the time. In addition, the commissioner ~~will~~ shall establish a maximum turbidity limit of representative samples of a waterworks' filtered water, not to exceed 1 NTU that the waterworks must not exceed at any time. These turbidity limits shall consistently achieve the removal rates and/or inactivation rates stated in this subdivision.

e. Each waterworks using a surface water source or groundwater source under the direct influence of surface water shall be operated by licensed operators of the appropriate classification as per the Virginia Board for Waterworks and Wastewater Works Operators Regulations (18VAC155-20).

f. If the ~~division~~ commissioner has determined that a waterworks has a surface water source or a groundwater source under the direct influence of surface water, filtration is required. The waterworks shall provide disinfection during the interim before filtration is installed as follows:

(1) The residual disinfectant concentration in the distribution system ~~cannot~~ shall not be less than 2.0 mg/L for more than four hours.

(2) The ~~waterworks~~ owner shall issue continuing boil water notices through the public notification procedure in 12VAC5-590-540 until such time as the required filtration equipment is installed.

(3) As an alternative to subdivisions B f 2 (1) and (2) of this section, the ~~waterworks~~ owner may demonstrate that the source can meet the appropriate C-T values shown in Appendix L and be considered to satisfy the requirements for 99.9% removal of Giardia cysts and virus, respectively. In addition, the waterworks owner ~~must~~ shall comply with the following:

(a) Justify that other alternative sources of supply meeting these regulations are not immediately available.

(b) Analysis of the source is performed quarterly for the contaminants listed in Tables 2.2, 2.3, and 2.4. The primary maximum contaminant levels shall not be exceeded.

(c) Daily turbidity monitoring and maintenance of the turbidity level not to exceed five NTU.

(d) MPN analysis of the raw water based on the minimum sample frequency chart below:

Population Served	Coliform Samples/Week
≤500	1
501 - 3,300	2
3,301 - 10,000	3
10,001 - 25,000	4
>25,000	5

Note: ~~Must~~ Shall be taken on separate days.

(e) Bacteriological sampling of the distribution system at a frequency of twice that required by Table 2.1.

3. Enhanced filtration and disinfection for Cryptosporidium – All waterworks using a surface water source or a groundwater source under the direct influence

of surface water shall comply with the following requirements based on their population or if the waterworks is a wholesaler, based on the population of the largest waterworks in the combined distribution system:

a. Owners shall conduct an initial and a second round of source water monitoring for each plant that treats a surface water or groundwater under the direct influence of surface water source. This monitoring may include sampling for Cryptosporidium, E. coli, and turbidity to determine what level, if any, of additional Cryptosporidium treatment is required.

(1) Initial round of source water monitoring. Owners shall conduct the following monitoring on the schedule in subdivision B 3 a (3) of this section unless they meet the monitoring avoidance criteria in subdivision B 3 a (4) of this section.

(a) Owners of waterworks serving at least 10,000 people shall sample their source water for Cryptosporidium, E. coli, and turbidity at least monthly for 24 months.

(b) Owners of waterworks serving fewer than 10,000 people:

(i) shall sample their source water for E. coli at least once every two weeks for 12 months, or

(ii) may avoid E. coli monitoring if the waterworks notifies the commissioner that it will monitor for Cryptosporidium as described in paragraph (c) of this section. The owner shall notify the commissioner no later than three months prior to the date the waterworks is otherwise required to start *E. coli* monitoring.

(c) Owners of waterworks serving fewer than 10,000 people shall sample their source water for Cryptosporidium at least twice per month for 12 months or at least monthly for 24 months if they meet one of the following, based on monitoring conducted under subdivision B 3 a (1) (b) of this section:

(i) For waterworks using lake/reservoir sources, the annual mean E. coli concentration is greater than 10 E. coli/100 mL.

(ii) For waterworks using flowing stream sources, the annual mean E. coli concentration is greater than 50 E. coli/100 mL.

(iii) The waterworks does not conduct E. coli monitoring as described in paragraph (1) (b) of this section.

(iv) Waterworks using ground water under the direct influence of surface water shall comply with the requirements of subdivision B 3 a (1) (c) of this section based on the E. coli level that applies to the nearest surface water body. If no surface water body is nearby, the waterworks shall comply based on the requirements that apply to waterworks using lake/reservoir sources.

(d) For waterworks serving fewer than 10,000 people, the commissioner may approve monitoring for an indicator other than E. coli under subdivision B 3 a (1) (b) (i) of this section. The commissioner also may approve an alternative to the E. coli concentration in subdivision B 3 a (1) (c) (i), (ii) or (iv) of this section to trigger Cryptosporidium monitoring. This approval by the commissioner shall be provided to the waterworks in writing and shall include the basis for the commission's determination that the alternative indicator and/or trigger level will provide a more accurate identification of whether a waterworks will exceed the Bin 1 Cryptosporidium level in subdivision B 3 c (1) (a) of this section.

(e) Waterworks may sample more frequently than required under this section if the sampling frequency is evenly spaced throughout the monitoring period.

(2) Second round of source water monitoring: Owners shall conduct a second round of source water monitoring that meets the requirements for monitoring parameters, frequency, and duration described in subdivision B 3 a (1) of this section, unless they meet the monitoring exemption criteria in subdivision B 3 a (4) of this section. Owners shall conduct this monitoring on the schedule in subdivision B 3 a (3) of this section.

(3) Monitoring schedule. Owners shall begin the monitoring required in subdivisions B 3 a (1) and (2) of this section no later than the month beginning with the date listed in the following table:

Source Water Monitoring Starting Dates Table

Owners of waterworks that serve...	Shall begin the first round of source water monitoring no later than the month beginning...	And shall begin the second round of source water monitoring no later than the month beginning...
At least 100,000 people	October 1, 2006	April 1, 2015
From 50,000 to 99,999 people	April 1, 2007	October 1, 2015
From 10,000 to 49,999 people	April 1, 2008	October 1, 2016
Fewer than 10,000 and monitor for E. coli	October 1, 2008	October 1, 2017
Fewer than 10,000 and monitor for Cryptosporidium[1]	April 1, 2010	April 1, 2019

[FN1] Applies to waterworks that meet the conditions of subdivision B 3 a (1) (c) of this section.

(4) Monitoring avoidance.

(a) Owners are not required to conduct source water monitoring under this subpart if the waterworks will provide a total of at least 5.5-log of treatment for Cryptosporidium, equivalent to meeting the treatment requirements of Bin 4 in subdivision B 3 c (2) of this section.

(b) If an owner chooses to provide the level of treatment in subdivision B 3 a (4) (a) of this section, rather than start source water monitoring, the owners shall notify the commissioner in writing no later than the date the owner is otherwise required to submit a sampling schedule for monitoring under subdivision B 3 a (5) of this section. Alternatively, an owner may choose to stop sampling at any point after the owner has initiated monitoring if the owner notifies the commissioner in writing that it will provide this level of treatment. Owners shall install and operate technologies to provide this level of treatment by the applicable treatment compliance date in subdivision B 3 c (3).

(5) Sampling schedules.

(a) Owners of waterworks required to conduct source water monitoring in accordance with subdivision B 3 a shall submit a sampling schedule that specifies the calendar dates when the owner shall collect each required sample.

(i) Owners shall submit sampling schedules to the commissioner no later than three months prior to the applicable date listed in subdivision B 3 a (3) for each round of required monitoring.

(ii) If the commissioner does not respond to an owner regarding the sampling schedule, the owner shall sample at the reported schedule.

(b) Owners shall collect samples within two days before or two days after the dates indicated in their sampling schedule (i.e., within a five-day period around the schedule date) unless one of the conditions of the following paragraphs apply.

(i) If an extreme condition or situation exists that may pose danger to the sample collector, or that cannot be avoided and causes the owner to be unable to sample in the scheduled five-day period, the owner shall sample as close to the scheduled date as is feasible unless the commissioner approves an alternative sampling date. The owner shall submit an explanation for the delayed sampling date to the commissioner concurrent with the shipment of the sample to the laboratory.

(ii) If an owner is unable to report a valid analytical result for a scheduled sampling date due to equipment failure, loss of or damage to the sample, failure to comply with the analytical method requirements, including the quality control requirements of 12VAC5-590-440, or the failure of an approved laboratory to analyze the sample, then the owner shall collect a replacement sample. The owner shall collect the replacement sample not later than 21 days after receiving information that an analytical result cannot be reported for the scheduled date unless the owner demonstrates that collecting a replacement sample within this time frame is not feasible or the commissioner approves an alternative resampling date. The owner shall submit an explanation for the delayed sampling date to the commissioner concurrent with the shipment of the sample to the laboratory.

(c) Owners of waterworks that fail to meet the criteria of subdivision B 3 a (5) (b) of this section for any source water sample required under subdivision B 3 a shall revise their sampling schedules to add dates for collecting all missed samples. Owners shall submit the revised schedule to the commissioner for approval prior to when the owner begins collecting the missed samples.

(6) Sampling locations.

(a) Owners of waterworks required to conduct source water monitoring under subdivision B 3 a shall collect samples for each plant that treats a surface water or groundwater under the direct influence of surface water source. Where multiple plants draw water from the same influent, such as the same pipe or intake, the commissioner may approve one set of monitoring results to be used to satisfy the requirements subdivision B 3 a for all plants.

(b) Owners shall collect source water samples prior to chemical treatment, such as coagulants, oxidants and disinfectants. However, the commissioner may approve the collection of a source water sample after chemical treatment. To grant this approval, the commissioner shall determine that collecting a sample prior to chemical treatment is not feasible for the waterworks and that the chemical treatment is unlikely to have a significant adverse effect on the analysis of the sample.

(c) Owners of waterworks that recycle filter backwash water shall collect source water samples prior to the point of filter backwash water addition.

(d) Bank filtration.

(i) Waterworks that receive Cryptosporidium treatment credit for bank filtration under 12VAC5-590-420 B 2 d, shall collect source water samples in the surface water prior to bank filtration.

(ii) Waterworks that use bank filtration as pretreatment to a filtration plant shall collect source water samples from the well (i.e., after bank filtration). Use of bank filtration during monitoring shall be consistent with routine operational practice. Waterworks collecting samples after a bank filtration process may not receive treatment credit for the bank filtration under subdivision B 3 d (4) (c) of this section.

(e) Multiple sources. Owners of waterworks with plants that use multiple water sources, including multiple surface water sources and blended surface water and ground water sources shall collect samples as specified in subdivision B 3 a (6) (e) (i) or (ii) of this section. The use of multiple sources during monitoring shall be consistent with routine operational practice.

(i) If a sampling tap is available where the sources are combined prior to treatment, waterworks shall collect samples from the tap.

(ii) If a sampling tap where the sources are combined prior to treatment is not available, owners shall collect samples at each source near the intake on the same day and shall follow either subdivision B 3 a (6) (e) (ii) ((a)) or ((b)) of this section for sample analysis.

((a)) Owners may composite samples from each source into one sample prior to analysis. The volume of sample from each source shall be weighted according to the proportion of the source in the total plant flow at the time the sample is collected.

((b)) Owners may analyze samples from each source separately and calculate a weighted average of the analysis results for each sampling date. The weighted average shall be calculated by multiplying the analysis result for each source by the fraction the source contributed to total plant flow at the time the sample was collected and then summing these values.

(f) Additional Requirements. Owners shall submit a description of their sampling location(s) to the commissioner at the same time as the sampling schedule required in subdivision B 3 a (3) of this section. This description shall address the position of the sampling location in relation to the waterworks water source(s) and treatment processes, including pretreatment, points of chemical treatment, and filter backwash recycle. If the commissioner does not respond to an owner regarding sampling location(s), the owner shall sample at the reported location(s).

(7) Analytical methods. All analytical methods shall be conducted in accordance with 12VAC5-590-440.

(8) Approved laboratories.

(a) Cryptosporidium. Owners shall have Cryptosporidium samples analyzed by a laboratory that is approved under EPA's Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium in Water or a laboratory that has been certified for Cryptosporidium analysis by an equivalent state laboratory certification program.

(b) E. coli. Any laboratory certified by the state for total coliform or fecal coliform analysis under 12VAC5-590-440 is approved for E. coli analysis under this subpart when the laboratory uses the same technique for E. coli that the laboratory uses under 12VAC5-590-440. Laboratories shall use methods for enumeration of E. coli in source water approved in 12VAC5-590-440.

(c) Turbidity. Measurements of turbidity shall be made by a party approved by the commissioner.

(9) Reporting of the source water results shall be in accordance with 12VAC5-590-530.

(10) Plants operating only part of the year. Owners of waterworks treating surface water or groundwater under the direct influence of surface water that operates for only part of the year shall conduct source water monitoring in accordance with this section, but with the following modifications:

(a) Owners shall sample their source water only during the months that the plant operates unless the commissioner specifies another monitoring period based on plant operating practices.

(b) Owners of waterworks with plants that operate less than six months per year and that monitor for Cryptosporidium shall collect at least six Cryptosporidium samples per year during each of two years of monitoring. Samples shall be evenly spaced throughout the period the plant operates.

(11) New sources;

(a) Owners of waterworks that begin using a new source of surface water or groundwater under the direct influence of surface water after the waterworks is required to begin monitoring under subdivision B 3 a (3) of this section shall monitor the new source on a schedule the commissioner approves. Source water monitoring shall meet the requirements of this section. The owner shall also meet the bin classification and Cryptosporidium treatment requirements of subdivision B 3 c (1) and (2) of this section, for the new source on a schedule the commissioner approves.

(b) The requirements of this section apply to waterworks using surface water or groundwater under the direct influence of surface water that begin operation after the monitoring start date applicable to the waterworks size under subdivision B 3 a (3) of this section.

(c) The owner shall begin a second round of source water monitoring no later than six years following initial bin classification under in subdivision B 3 c (1) of this section.

(12) Failure to collect any source water sample required under this section in accordance with the sampling schedule, sampling location, analytical method, approved laboratory, and reporting requirements of subdivision B 3 a (5), (6), (7), (8), or (9) of this section is a monitoring violation.

(13) Grandfathering monitoring data. Owners may use (grandfather) monitoring data collected prior to the applicable monitoring start date in subdivision B 3 a (3) of this section to meet the initial source water monitoring requirements in subdivision B 3 a (1) of this section. Grandfathered data may substitute for an equivalent number of months at the end of the monitoring period. All data submitted under this paragraph shall meet the requirements in (13) (a) through (h) listed below and be approved by the commissioner:

(a) An owner may grandfather Cryptosporidium samples to meet the requirements of this section when the owner does not have corresponding E. coli and turbidity samples. A waterworks that grandfathers Cryptosporidium samples without E. coli and turbidity samples is not required to collect E. coli and turbidity samples when the system completes the requirements for Cryptosporidium monitoring under this section.

(b) E. coli sample analysis. The analysis of E. coli samples shall meet the analytical method and approved laboratory requirements of subdivision B 3 a (7) and (8) of this section.

(c) Cryptosporidium sample analysis. The analysis of Cryptosporidium samples shall meet the requirements of subdivision B 3 a (8) of this section.

(d) Sampling location. The sampling location shall meet the conditions in subdivision B 3 a (6) of this section.

(e) Sampling frequency. Cryptosporidium samples were collected no less frequently than each calendar month on a regular schedule, beginning no earlier than January 1999. Sample collection intervals may vary for the conditions specified in subdivision B 3 a (5) (b) (i) and (ii) of this section, if the owner provides documentation of the condition when reporting monitoring results.

(i) The commissioner may approve grandfathering of previously collected data where there are time gaps in the sampling frequency if the owner conducts additional monitoring the commissioner specifies to ensure that the data used to comply with the initial source water monitoring requirements of subdivision B 3 a of this section are seasonally representative and unbiased.

(ii) Owners may grandfather previously collected data where the sampling frequency within each month varied. If the Cryptosporidium sampling frequency varied, owners shall follow the monthly averaging procedure in subdivision B 3 c (1) (a) (v) of this section, when calculating the bin classification for filtered systems.

(f) Reporting monitoring results for grandfathering. Owners that request to grandfather previously collected monitoring results shall report the following information by the applicable dates listed in the following paragraphs. Owners shall report this information to the commissioner.

(i) Owners shall report that they intend to submit previously collected monitoring results for grandfathering. This report shall specify the number of previously collected results the owner shall submit, the dates of the first and last sample, and whether an owner shall conduct additional source water monitoring to meet the requirements in subdivision B 3 a of this section. Owners shall report this information no later than the date the sampling schedule listed in subdivision B 3 a (3) of this section is required.

(ii) Owners shall report previously collected monitoring results for grandfathering, along with the associated documentation listed in paragraphs ((a)) through ((d)) listed below, no later than two months after the applicable date listed in subdivision B 3 a (3) of this section.

((a)) For each sample result, owners shall report the applicable data elements in 12VAC5-590-530 C 1 c.

((b)) Owners shall certify that the reported monitoring results include all results the waterworks generated during the time period beginning with the first reported result and ending with the final reported result. This applies to samples that were collected from the sampling location specified for source water monitoring under this subpart, not spiked, and analyzed using the laboratory's routine process for the analytical methods listed in this section.

((c)) Owners shall certify that the samples were representative of a plant's source water(s) and the source water(s) have not changed. Owners shall report a description of the sampling location(s), which shall address the position of the sampling location in relation to the waterworks' water source(s) and treatment processes, including points of chemical addition and filter backwash recycle.

((d)) For Cryptosporidium samples, the laboratory or laboratories that analyzed the samples shall provide a letter certifying that the quality control criteria specified in the methods listed in subdivision B 3 a (8) of this section were met for each sample batch associated with

the reported results. Alternatively, the laboratory may provide bench sheets and sample examination report forms for each field, matrix spike, IPR, OPR, and method blank sample associated with the reported results.

(g) If the commissioner determines that a previously collected data set submitted for grandfathering was generated during source water conditions that were not normal for the waterworks, such as a drought, the commissioner may disapprove the data. Alternatively, the commissioner may approve the previously collected data if the owner reports additional source water monitoring data, as determined by the commissioner, to ensure that the data set used under subdivision B 3 c (1) of this section represents average source water conditions for the waterworks.

(h) If an owner submits previously collected data that fully meets the number of samples required for initial source water monitoring under subdivision B 3 a (1) of this section and some of the data are rejected due to not meeting the requirements of this section, the owner shall conduct additional monitoring to replace rejected data on a schedule the commissioner approves. Owners are not required to begin this additional monitoring until two months after notification that data have been rejected and additional monitoring is necessary.

b. Owners of waterworks that plan to make a significant change to their disinfection practice shall develop disinfection profiles and calculate disinfection benchmarks, as described in subdivision B 3 a (1) and (2) below.

(1) Requirements when making a significant change in disinfection practice.

(a) Following the completion of initial source water monitoring under subdivision B 3 a (1) of this section, owners of waterworks that plan to make a significant change to its disinfection practice, as defined in subdivision B 3 b (1) (b) of this section, shall develop disinfection profiles and calculate disinfection benchmarks for Giardia lamblia and viruses as described in subdivision B 3 b (2) of this section. Prior to changing the disinfection practice, the owner shall notify the commissioner and shall include in this notice the information in subdivision B 3 b (1) a) (i) through (iii) of this section.

(i) A completed disinfection profile and disinfection benchmark for Giardia lamblia and viruses as described in subdivision B 3 b (2) of this section.

(ii) A description of the proposed change in disinfection practice.

(iii) An analysis of how the proposed change will affect the current level of disinfection.

(b) Significant changes to disinfection practice are defined as follows:

(i) Changes to the point of disinfection;

(ii) Changes to the disinfectant(s) used in the treatment plant;

(iii) Changes to the disinfection process; or

(iv) Any other modification identified by the commissioner as a significant change to disinfection practice.

(2) Developing the disinfection profile and benchmark.

(a) Owners of waterworks required to develop disinfection profiles in accordance with subdivision B 3 b (1) of this section shall follow the requirements of this section. Owners shall monitor at least weekly for a period of 12 consecutive months to determine the total log inactivation for Giardia lamblia and viruses. If owners monitor more frequently, the monitoring frequency shall be evenly spaced. Owners of waterworks that operate for fewer than 12 months per year shall monitor weekly during the period of operation. Owners shall determine log inactivation for Giardia lamblia through the entire plant, based on CT99.9 values in Appendix L. Owners shall determine log inactivation for viruses through the entire treatment plant based on a protocol approved by the commissioner.

(b) Owners of waterworks with a single point of disinfectant application prior to the entrance to the distribution system shall conduct the monitoring in subdivision B 3 b (2) (b) (i) through (iv) of this section. Owners of waterworks with more than one point of disinfectant application shall conduct the monitoring in subdivision B 3 b (2) (b) (i) through (iv) of this section for each disinfection segment. Owners shall monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in Appendix L.

(i) For waterworks using a disinfectant other than UV, the temperature of the disinfected water shall be measured at each residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the commissioner.

(ii) For waterworks using chlorine, the pH of the disinfected water shall be measured at each chlorine residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the commissioner.

(iii) The disinfectant contact time(s) (t) shall be determined during peak hourly flow.

(iv) The residual disinfectant concentration(s) (C) of the water before or at the first customer and prior to each

additional point of disinfectant application shall be measured during peak hourly flow.

(c) In lieu of conducting new monitoring under subdivision B 3 b (2) (b) of this section, owners may elect to meet the requirements of subdivision B 3 b (2) (c) (i) or (ii) of this section.

(i) Owners of waterworks that have at least one year of existing data that are substantially equivalent to data collected under the provisions of subdivision B 3 b (2) (b) of this section may use these data to develop disinfection profiles as specified in this section if the owner has neither made a significant change to its treatment practice nor changed sources since the data were collected. Owners may develop disinfection profiles using up to three years of existing data.

(ii) Owners may use disinfection profile(s) developed under 12VAC5-590-500 E 2 in lieu of developing a new profile if the owner has neither made a significant change to its treatment practice nor changed sources since the profile was developed. Owners that have not developed a virus profile under 12VAC5-590-500 E 2 shall develop a virus profile using the same monitoring data on which the Giardia lamblia profile is based.

(d) Owners of waterworks shall calculate the total inactivation ratio for Giardia lamblia as specified in subdivision B 3 b (2) (d) (i) through (iii) of this section.

(i) Owners of waterworks using only one point of disinfectant application may determine the total inactivation ratio for the disinfection segment based on either of the methods in subdivision B 3 b (2) (d) (i) ((a)) or ((b)) of this section.

((a)) Determine one inactivation ratio (CTcalc/CT99.9) before or at the first customer during peak hourly flow.

((b)) Determine successive CTcalc/CT99.9 values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. The owner shall calculate the total inactivation ratio by determining (CTcalc/CT99.9) for each sequence and then adding the (CTcalc/CT99.9) values together to determine (Σ (CTcalc/CT99.9)).

(ii) Owners of waterworks using more than one point of disinfectant application before the first customer shall determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The (CTcalc/CT99.9) value of each segment and (Σ (CTcalc/CT99.9)) shall be calculated using the method in paragraph (i) ((b)) of this section.

(iii) The owner shall determine the total logs of inactivation by multiplying the value calculated in subdivision B 3 b (2) (d) (i) or (ii) of this section by 3.0.

(iv) Owners shall calculate the log of inactivation for viruses using a protocol approved by the commissioner.

(e) Owners shall use the procedures specified in (i) and (ii) listed below to calculate a disinfection benchmark.

(i) For each year of profiling data collected and calculated under subdivision B 3 b (2) (a) through (d) of this section, owners shall determine the lowest mean monthly level of both Giardia lamblia and virus inactivation. Owners shall determine the mean Giardia lamblia and virus inactivation for each calendar month for each year of profiling data by dividing the sum of daily or weekly Giardia lamblia and virus log inactivation by the number of values calculated for that month.

(ii) The disinfection benchmark is the lowest monthly mean value (for waterworks with one year of profiling data) or the mean of the lowest monthly mean values (for waterworks with more than one year of profiling data) of Giardia lamblia and virus log inactivation in each year of profiling data.

c. Owners shall determine their Cryptosporidium treatment bin classification as described in subdivision B 3 c (1) and provide additional treatment for Cryptosporidium, if required, as described in subdivision B 3 c (2). Owners shall implement Cryptosporidium treatment according to the schedule in subdivision B 3 c (3).

(1) Bin classification for waterworks.

(a) Following completion of the initial round of source water monitoring required under subdivision B 3 a (1), owners shall calculate an initial Cryptosporidium bin concentration for each plant for which monitoring was required. Calculation of the bin concentration shall use the Cryptosporidium results reported under subdivision B 3 a (1) and shall follow these procedures:

(i) For waterworks that collect a total of at least 48 samples, the bin concentration is equal to the arithmetic mean of all sample concentrations.

(ii) For waterworks that collect a total of at least 24 samples, but not more than 47 samples, the bin concentration is equal to the highest arithmetic mean of all sample concentrations in any 12 consecutive months during which Cryptosporidium samples were collected.

(iii) For waterworks that serve fewer than 10,000 people and monitor for Cryptosporidium for only one year (i.e., collect 24 samples in 12 months), the bin concentration is

equal to the arithmetic mean of all sample concentrations.

(iv) For waterworks with plants operating only part of the year that monitor fewer than 12 months per year under subdivision B 3 a (1), the bin concentration is equal to the highest arithmetic mean of all sample concentrations during any year of Cryptosporidium monitoring.

(v) If the monthly Cryptosporidium sampling frequency varies, owners shall first calculate a monthly average for each month of monitoring. Owners shall then use these monthly average concentrations, rather than individual sample concentrations, in the applicable calculation for bin classification in subdivision B 3 c (1) (a) (i) through (iv) of this section.

(b) Owners shall determine their initial bin classification from the following table and using the Cryptosporidium bin concentration calculated under subdivision B 3 c (1) (a) of this section:

Bin Classification Table for Filtered Systems

For owners of waterworks that are:	with a Cryptosporidium bin concentration of[1] ...	The bin classification is...
...required to monitor for Cryptosporidium under subdivision B 3 a (1)	Cryptosporidium less than 0.075 oocysts/L	Bin 1
	Cryptosporidium equal to or greater than 0.075 oocysts/L but less than 1.0 oocysts/L	Bin 2
	Cryptosporidium equal to or greater than 1.0 oocysts/L but less than 3.0 oocysts/L	Bin 3
	Cryptosporidium equal to or greater than 3.0 oocysts/L	Bin 4
...serving fewer than 10,000 people and NOT required to monitor for Cryptosporidium under B 3 a (1)(c)	NA	Bin 1

[FN1] Based on calculations in subdivision B 3 c (1) (a) or (c) of this section, as applicable

(c) Following completion of the second round of source water monitoring required under subdivision B 3 a (2), owners shall recalculate their Cryptosporidium bin concentration using the Cryptosporidium results reported under subdivision B 3 a (2) and following the procedures in subdivision B 3 c (1) (a)(i) through (iv) of this section. Owners shall then redetermine their bin classification using this bin concentration and the table in subdivision B 3 c (1) (b) of this section.

(d) Reporting of bin classifications

(i) Owners shall report their initial bin classification under subdivision B 3 c (1) (b) of this section to the commissioner for approval no later than six months after the waterworks is required to complete initial source water monitoring based on the schedule in subdivision B 3 a (3).

(ii) Owners shall report their bin classification under subdivision B 3 c (1) (c) of this section to the commissioner for approval no later than six months after the owner is required to complete the second round of source water monitoring based on the schedule in subdivision B 3 c (1) 3 a (3) of this section.

(iii) The bin classification report to the commissioner shall include a summary of source water monitoring data and the calculation procedure used to determine bin classification.

(e) Failure to comply with the conditions of subdivision B 3 c (1) (d) of this section is a violation of the treatment technique requirement.

(2) Waterworks additional Cryptosporidium treatment requirements.

(a) Waterworks shall provide the level of additional treatment for Cryptosporidium specified in this paragraph based on their bin classification as determined under subdivision B 3 c (1) of this section and according to the schedule in subdivision B 3 c (3) (b) of this section.

If the waterworks bin classification is...	And the waterworks uses the following filtration treatment in full compliance with 12VAC5-590-420 A and B, then the additional Cryptosporidium treatment requirements are...			
	Conventional filtration treatment (including softening)	Direct filtration	Slow sand or diatomaceous earth filtration	Alternative filtration technologies
Bin 1	No additional treatment	No additional treatment	No additional treatment	No additional treatment
Bin 2	1-log treatment	1.5-log treatment	1-log treatment	(1)
Bin 3	2-log treatment	2.5-log treatment	2-log treatment	(2)
Bin 4	2.5-log treatment	3-log treatment	2.5-log treatment	(3)

FN1 As determined by the commissioner such that the total Cryptosporidium removal and inactivation is at least 4.0-log

FN2 As determined by the commissioner such that the total Cryptosporidium removal and inactivation is at least 5.0-log

FN3 As determined by the commissioner such that the total Cryptosporidium removal and inactivation is at least 5.5-log

(b) Additional treatment

(i) Owners shall use one or more of the treatment and management options listed in subdivision B 3 d, termed the microbial toolbox, to comply with the additional Cryptosporidium treatment required in subdivision B 3 c (2) (a) of this section.

(ii) Waterworks classified in Bin 3 and Bin 4 shall achieve at least 1-log of the additional Cryptosporidium treatment required under subdivision B 3 c (2) (a) of this section using either one or a combination of the following: bag filters, bank filtration, cartridge filters, chlorine dioxide, membranes, ozone, or UV, as described in subdivision B 3 d (3) through (7) of this section.

(c) Failure by a waterworks in any month to achieve treatment credit by meeting criteria in subdivision B 3 d (3) through (7) of this section for microbial toolbox options that is at least equal to the level of treatment required in subdivision B 3 c (2) (a) of this section is a violation of the treatment technique requirement.

(d) If the commissioner determines during a sanitary survey or an equivalent source water assessment that after a waterworks completed the monitoring conducted under subdivision B 3 a (1) or (2) of this section, significant changes occurred in the waterworks' watershed that could lead to increased contamination of the source water by Cryptosporidium, the owner shall take actions specified by the commissioner to address the contamination. These actions may include additional source water monitoring and/or implementing microbial toolbox options listed in subdivision B 3 d (2) of this section.

(3) Schedule for compliance with Cryptosporidium treatment requirements.

(a) Following initial bin classification in accordance with subdivision B 3 c (1) (b) of this section, waterworks shall provide the level of treatment for Cryptosporidium required under subdivision B 3 c (2) of this section according to the schedule in subdivision B 3 c (3) (b) of this section.

(b) Cryptosporidium treatment compliance dates.

Cryptosporidium Treatment Compliance Dates Table	
Waterworks that serve....	Shall comply with Cryptosporidium treatment requirements no later than[1]...
At least 100,000 people	April 1, 2012
From 50,000 to 99,999 people	October 1, 2012
From 10,000 to 49,999 people	October 1, 2013
Fewer than 10,000 people	October 1, 2014

FN1 The commissioner may allow up to an additional two years for complying with the treatment requirement for waterworks making capital improvements.

(c) If the bin classification for a filtered system changes following the second round of source water monitoring, as determined under subdivision B 3 c (1) (c) of this section, the waterworks shall provide the level of treatment for Cryptosporidium required under

subdivision B 3 c (2) of this section on a schedule the commissioner approves.

d. Owners of waterworks required to provide additional treatment for Cryptosporidium shall implement microbial toolbox options that are designed and operated as described in subdivision B 3 d (1) through (7) of this section.

(1) Waterworks receive the treatment credits listed in the table in subdivision B 3 d (2) of this section by meeting the conditions for microbial toolbox options described in subdivision B 3 d (3) through (7) of this section. Waterworks apply these treatment credits to meet the treatment requirements in subdivision B 3 c (2) of this section.

(2) Microbial Toolbox Summary Table: Options, Treatment Credits and Criteria

Microbial Toolbox Summary Table: Options, Treatment Credits and Criteria

Toolbox Option	Cryptosporidium treatment credit with design and implementation criteria
Source Protection and Management Toolbox Options	
Watershed control program	0.5-log credit for program approved by the commissioner comprising required elements, annual program status report to the commissioner, and regular watershed survey. Specific criteria are in subdivision B 3 d (3) (a)
Alternative source/ intake management	No prescribed credit. Owners may conduct simultaneous monitoring for treatment bin classification at alternative intake locations or under alternative intake management strategies. Specific criteria are in subdivision B 3 d (3) (b).
Pre Filtration Toolbox Options	
Presedimentation basin with coagulation	0.5-log credit during any month that presedimentation basins achieve a monthly mean reduction of 0.5-log or greater in turbidity or alternative performance criteria approved by the commissioner. To be eligible, basins shall be operated continuously with coagulant addition and all plant flow shall pass through basins. Specific criteria are in subdivision B 3 d (4) (a)
Two-stage lime softening	0.5-log credit for two-stage softening where chemical addition and hardness precipitation occur in both stages. All plant flow shall pass through both stages. Single-stage softening is credited as equivalent to conventional treatment. Specific criteria are in subdivision B 3 d (4) (b).
Bank filtration	0.5-log credit for 25-foot setback; 1.0-log credit for 50-foot setback; aquifer shall be unconsolidated sand containing at least 10% fines; average turbidity in wells shall be less than 1 NTU. Waterworks using wells followed by filtration when conducting source water monitoring shall sample the well to determine bin classification and are not eligible for additional credit. Specific criteria are in subdivision B 3 d (4) (c).
Treatment Performance Toolbox Options	
Combined filter performance	0.5-log credit for combined filter effluent turbidity less than or equal to 0.15 NTU in at least 95% of measurements each month. Specific criteria are in subdivision B 3 d (5) (a).
Individual filter performance	0.5-log credit (in addition to 0.5-log combined filter performance credit) if individual filter effluent turbidity is less than or equal to 0.15 NTU in at least 95% of samples each month in each filter and is never greater than 0.3 NTU in two consecutive measurements in any filter. Specific criteria are in subdivision B 3 d (5) (b).
Additional Filtration Toolbox Options	
Bag or cartridge filters (individual filters)	Up to 2-log credit based on the removal efficiency demonstrated during challenge testing with a 1.0-log factor of safety. Specific criteria are in subdivision B 3 d (6) (a).
Bag or cartridge filters (in series)	Up to 2.5-log credit based on the removal efficiency demonstrated during challenge testing with a 0.5-log factor of safety. Specific criteria are in subdivision B 3 d (6) (a).
Membrane filtration	Log credit equivalent to removal efficiency demonstrated in challenge test for device if supported by direct integrity testing. Specific criteria are in subdivision B 3 d (6) (b).
Second stage filtration	0.5-log credit for second separate granular media filtration stage if treatment train includes coagulation prior to first filter. Specific criteria are in subdivision B 3 d (6) (c).
Slow sand filters	2.5-log credit as a secondary filtration step; 3.0-log credit as a primary filtration process. No prior chlorination

	for either option. Specific criteria are in subdivision B 3 d (6) (d).
Inactivation Toolbox Options	
Chlorine dioxide	Log credit based on measured CT in relation to CT table. Specific criteria in subdivision B 3 d (7) (b).
Ozone	Log credit based on measured CT in relation to CT table. Specific criteria in subdivision B 3 d (7) (b).
UV	Log credit based on validated UV dose in relation to UV dose table; reactor validation testing required to establish UV dose and associated operating conditions. Specific criteria in subdivision B 3 d (7) (d).

(3) Source toolbox components.

(a) Watershed control program. Waterworks receive 0.5-log Cryptosporidium treatment credit for implementing a watershed control program that meets the requirements of this section.

(i) Owners that intend to apply for the watershed control program credit shall notify the commissioner of this intent no later than two years prior to the treatment compliance date applicable to the waterworks in subdivision B 3 a (3) of this section.

(ii) Owners shall submit to the commissioner a proposed watershed control plan no later than one year before the applicable treatment compliance date in subdivision B 3 a (3) of this section. The commissioner shall approve the watershed control plan for the waterworks to receive watershed control program treatment credit. The watershed control plan shall include the following elements:

((a)) Identification of an "area of influence" outside of which the likelihood of Cryptosporidium or fecal contamination affecting the treatment plant intake is not significant. This is the area to be evaluated in future watershed surveys under subdivision B 3 d (3) (a) (v) ((b)) of this section.

((b)) Identification of both potential and actual sources of Cryptosporidium contamination and an assessment of the relative impact of these sources on the waterworks' source water quality.

((c)) An analysis of the effectiveness and feasibility of control measures that could reduce Cryptosporidium loading from sources of contamination to the waterworks' source water.

((d)) A statement of goals and specific actions the owner shall undertake to reduce source water Cryptosporidium levels. The plan shall explain how the actions are expected to contribute to specific goals, identify watershed partners and their roles, identify resource requirements and commitments, and include a schedule for plan implementation with deadlines for completing specific actions identified in the plan.

(iii) Waterworks with existing watershed control programs (i.e., programs in place on January 5, 2006) are eligible to seek this credit. Their watershed control plans shall meet the criteria in subdivision B 3 d (3) (a) (ii) of this section and shall specify ongoing and future actions that will reduce source water Cryptosporidium levels.

(iv) If the commissioner does not respond to an owner regarding approval of a watershed control plan submitted under this section and the owner meets the other requirements of this section, the watershed control program shall be considered approved and 0.5 log Cryptosporidium treatment credit shall be awarded unless and until the commissioner subsequently withdraws such approval.

(v) To maintain the 0.5-log credit, owners shall complete the following actions:

((a)) Submit an annual watershed control program status report to the commissioner. The annual watershed control program status report shall describe the owner's implementation of the approved plan and assess the adequacy of the plan to meet its goals. It shall explain how the waterworks is addressing any shortcomings in plan implementation, including those previously identified by the commissioner or as the result of the watershed survey conducted under subdivision B 3 d (3) (a) (v) ((b)) of this section. It shall also describe any significant changes that have occurred in the watershed since the last watershed sanitary survey. If an owner determines during implementation that making a significant change to the approved watershed control program is necessary, the owner shall notify the commissioner prior to making any such changes. If any change is likely to reduce the level of source water protection, the owner shall also list in the notification the actions the owners will take to mitigate this effect.

((b)) Undergo a watershed sanitary survey every three years for community waterworks and every five years for noncommunity waterworks and submit the survey report to the commissioner. The survey shall be conducted according to commissioner's guidelines and by persons the commissioner approves.

((i)) The watershed sanitary survey shall meet the following criteria: encompass the region identified in the watershed control plan approved by the commissioner as the area of influence; assess the implementation of actions to reduce source water Cryptosporidium levels;

and identify any significant new sources of Cryptosporidium.

((ii)) If the commissioner determines that significant changes may have occurred in the watershed since the previous watershed sanitary survey, the waterworks shall undergo another watershed sanitary survey by a date the commissioner requires, which may be earlier than the regular date in subdivision B 3 d (3) (a) (v) ((b)) of this section.

((c)) The owner shall make the watershed control plan, annual status reports, and watershed sanitary survey reports available to the public upon request. These documents shall be in a plain language style and include criteria by which to evaluate the success of the program in achieving plan goals. The commissioner may approve an owner to withhold from the public portions of the annual status report, watershed control plan, and watershed sanitary survey based on water supply security considerations.

(vi) If the commissioner determines that an owner is not carrying out the approved watershed control plan, the commissioner may withdraw the watershed control program treatment credit.

(b) Alternative source.

(i) An owner may conduct source water monitoring that reflects a different intake location (either in the same source or for an alternate source) or a different procedure for the timing or level of withdrawal from the source (alternative source monitoring). If the commissioner approves, an owner may determine the bin classification under subdivision B 3 c (1) of this section based on the alternative source monitoring results.

(ii) If an owner conducts alternative source monitoring under subdivision B 3 d (3) (b) (i) of this section, the owner shall also monitor their current plant intake concurrently as described in subdivision B 3 a of this section.

(iii) Alternative source monitoring under subdivision B 3 d (3) (b) (i) of this section shall meet the requirements for source monitoring to determine bin classification, as described in subdivision B 3 a (1) through (13) of this section. Owners shall report the alternative source monitoring results to the commissioner, along with supporting information documenting the operating conditions under which the samples were collected.

(iv) If an owner determines the bin classification under subdivision B 3 c (1) of this section using alternative source monitoring results that reflect a different intake location or a different procedure for managing the timing or level of withdrawal from the source, the owner shall relocate the intake or permanently adopt the withdrawal procedure, as applicable, no later than the applicable treatment compliance date in subdivision B 3 c (3) of this section.

(4) Pre-filtration treatment toolbox components.

(a) Presedimentation. Waterworks receive 0.5-log Cryptosporidium treatment credit for a presedimentation basin during any month the process meets the following criteria:

(i) The presedimentation basin shall be in continuous operation and shall treat the entire plant flow taken from a surface water or groundwater under the direct influence of surface water source.

(ii) The waterworks shall continuously add a coagulant to the presedimentation basin.

(iii) The presedimentation basin shall achieve the performance criteria in either of the following.

((a)) Demonstrates at least 0.5-log mean reduction of influent turbidity. This reduction shall be determined using daily turbidity measurements in the presedimentation process influent and effluent and shall be calculated as follows: log10(monthly mean of daily influent turbidity) - log10(monthly mean of daily effluent turbidity).

((b)) Complies with performance criteria approved by the commissioner that demonstrate at least 0.5-log mean removal of micron-sized particulate material through the presedimentation process.

(b) Two-stage lime softening. Waterworks receive an additional 0.5-log Cryptosporidium treatment credit for a two-stage lime softening plant if chemical addition and hardness precipitation occur in two separate and sequential softening stages prior to filtration. Both softening stages shall treat the entire plant flow taken from a surface water or groundwater under the direct influence of surface water source.

(c) Bank filtration. Waterworks receive Cryptosporidium treatment credit for bank filtration that serves as pretreatment to a filtration plant by meeting the criteria in this paragraph. Waterworks using bank filtration when they begin source water monitoring under subdivision B 3 a (1) of this section shall collect samples as described in subdivision B 3 a (6) (d) of this section and are not eligible for this credit.

(i) Wells with a ground water flow path of at least 25 feet receive 0.5-log treatment credit; wells with a ground water flow path of at least 50 feet receive 1.0-log treatment credit. The ground water flow path shall be determined as specified in subdivision B 3 d (c) (iv) of this section.

(ii) Only wells in granular aquifers are eligible for treatment credit. Granular aquifers are those comprised of sand, clay, silt, rock fragments, pebbles or larger particles, and minor cement. A waterworks shall characterize the aquifer at the well site to determine aquifer properties. Owners shall extract a core from the aquifer and demonstrate that in at least 90% of the core length, grains less than 1.0 mm in diameter constitute at least 10% of the core material.

(iii) Only horizontal and vertical wells are eligible for treatment credit.

(iv) For vertical wells, the ground water flow path is the measured distance from the edge of the surface water body under high flow conditions (determined by the 100-year floodplain elevation boundary or by the floodway, as defined in Federal Emergency Management Agency flood hazard maps) to the well screen. For horizontal wells, the ground water flow path is the measured distance from the bed of the river under normal flow conditions to the closest horizontal well lateral screen.

(v) Owners shall monitor each wellhead for turbidity at least once every four hours while the bank filtration process is in operation. If monthly average turbidity levels, based on daily maximum values in the well, exceed 1 NTU, the owner shall report this result to the commissioner and conduct an assessment within 30 days to determine the cause of the high turbidity levels in the well. If the commissioner determines that microbial removal has been compromised, the commissioner may revoke treatment credit until the owner implements corrective actions approved by the commissioner to remediate the problem.

(vi) Springs and infiltration galleries are not eligible for treatment credit under this section.

(vii) Bank filtration demonstration of performance. The commissioner may approve Cryptosporidium treatment credit for bank filtration based on a demonstration of performance study that meets the criteria in this paragraph. This treatment credit may be greater than 1.0-log and may be awarded to bank filtration that does not meet the criteria in subdivision B 3 d (4) (c) (i) through (v) of this section.

((a)) The study shall follow a protocol approved by the commissioner and shall involve the collection of data on the removal of Cryptosporidium or a surrogate for Cryptosporidium and related hydrogeologic and water quality parameters during the full range of operating conditions.

((b)) The study shall include sampling both from the production well(s) and from monitoring wells that are screened and located along the shortest flow path between the surface water source and the production well(s).

(5) Treatment performance toolbox components.

(a) Combined filter performance. Waterworks using conventional filtration treatment or direct filtration treatment receive an additional 0.5-log Cryptosporidium treatment credit during any month the waterworks meets the criteria in this paragraph. Combined filter effluent (CFE) turbidity shall be less than or equal to 0.15 NTU in at least 95% of the measurements. Turbidity shall be measured as described in 12VAC5-590-370 B 7 b and 12VAC5-590-370 E.

(b) Individual filter performance. Waterworks using conventional filtration treatment or direct filtration treatment receive 0.5-log Cryptosporidium treatment credit, which can be in addition to the 0.5-log credit under subdivision B 3 d (5) (a) of this section, during any month the waterworks meets the criteria in this paragraph. Compliance with these criteria shall be based on individual filter turbidity monitoring as described in 12VAC5-590-370 B 7 b (1).

(i) The filtered water turbidity for each individual filter shall be less than or equal to 0.15 NTU in at least 95% of the measurements recorded each month.

(ii) No individual filter may have a measured turbidity greater than 0.3 NTU in two consecutive measurements taken 15 minutes apart.

(iii) Any waterworks that has received treatment credit for individual filter performance and fails to meet the requirements of subdivision B 3 d (5) (b) (i) or (ii) of this section during any month does not receive a treatment technique violation under subdivision B 3 c (2) (c) if the commissioner determines the following:

((a)) The failure was due to unusual and short-term circumstances that could not reasonably be prevented through optimizing treatment plant design, operation, and maintenance.

((b)) The waterworks has experienced no more than two such failures in any calendar year.

(6) Additional filtration toolbox components.

(a) Bag and cartridge filters. Waterworks receive Cryptosporidium treatment credit of up to 2.0-log for individual bag or cartridge filters and up to 2.5-log for bag or cartridge filters operated in series by meeting the criteria in subdivision B 3 d (6) (a) (i) through (x) of this section. To be eligible for this credit, owners shall report the results of challenge testing that meets the requirements of subdivision B 3 d (6) (a)(ii) through (ix) of this section to the commissioner. The filters shall treat the entire plant flow taken from a surface water or

groundwater under the direct influence of surface water source.

(i) The Cryptosporidium treatment credit awarded to bag or cartridge filters shall be based on the removal efficiency demonstrated during challenge testing that is conducted according to the criteria in subdivision B 3 d (6) (a) (ii) through (ix) of this section. A factor of safety equal to 1-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series shall be applied to challenge testing results to determine removal credit. Owners may use results from challenge testing conducted prior to January 5, 2006, if the prior testing was consistent with the criteria specified in subdivision B 3 d (6) (a) (ii) through (ix) of this section.

(ii) Challenge testing shall be performed on full-scale bag or cartridge filters, and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the waterworks will use for removal of Cryptosporidium. Bag or cartridge filters shall be challenge tested in the same configuration that the waterworks will use, either as individual filters or as a series configuration of filters.

(iii) Challenge testing shall be conducted using Cryptosporidium or a surrogate that is removed no more efficiently than Cryptosporidium. The microorganism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate shall be determined using a method capable of discreetly quantifying the specific microorganism or surrogate used in the test; gross measurements such as turbidity shall not be used.

(iv) The maximum feed water concentration that can be used during a challenge test shall be based on the detection limit of the challenge particulate in the filtrate (i.e., filtrate detection limit) and shall be calculated using the following equation:

Maximum Feed Concentration = 1×10^4 x (Filtrate Detection Limit)

(v) Challenge testing shall be conducted at the maximum design flow rate for the filter as specified by the manufacturer.

(vi) Each filter evaluated shall be tested for a duration sufficient to reach 100% of the terminal pressure drop, which establishes the maximum pressure drop under which the filter may be used to comply with the requirements of this subpart.

(vii) Removal efficiency of a filter shall be determined from the results of the challenge test and expressed in terms of log removal values using the following equation:

$LRV = LOG_{10}(C_f) - LOG_{10}(C_p)$

where LRV = log removal value demonstrated during challenge testing; C_f = the feed concentration measured during the challenge test; and C_p = the filtrate concentration measured during the challenge test. In applying this equation, the same units shall be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, then the term C_p shall be set equal to the detection limit.

(viii) Each filter tested shall be challenged with the challenge particulate during three periods over the filtration cycle: within two hours of start-up of a new filter; when the pressure drop is between 45 and 55% of the terminal pressure drop; and at the end of the cycle after the pressure drop has reached 100% of the terminal pressure drop. An LRV shall be calculated for each of these challenge periods for each filter tested. The LRV for the filter (LRVfilter) shall be assigned the value of the minimum LRV observed during the three challenge periods for that filter.

(ix) If fewer than 20 filters are tested, the overall removal efficiency for the filter product line shall be set equal to the lowest LRV filter among the filters tested. If 20 or more filters are tested, the overall removal efficiency for the filter product line shall be set equal to the 10th percentile of the set of LRVfilter values for the various filters tested. The percentile is defined by (i/(n+1)) where i is the rank of n individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(x) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, challenge testing to demonstrate the removal efficiency of the modified filter shall be conducted and submitted to the commissioner.

(b) Membrane filtration.

(i) Waterworks receive Cryptosporidium treatment credit for membrane filtration that meets the criteria of this paragraph. Membrane cartridge filters that meet the definition of membrane filtration in 12VAC5-590-10 are eligible for this credit. The level of treatment credit a waterworks receives is equal to the lower of the values determined as follows:

((a)) The removal efficiency demonstrated during challenge testing conducted under the conditions in subdivision B 3 d (6) (b) (ii) of this section.

((b)) The maximum removal efficiency that can be verified through direct integrity testing used with the membrane filtration process under the conditions in subdivision B 3 d (6) (b) (iii) of this section.

(ii) Challenge Testing. The membrane used by the waterworks shall undergo challenge testing to evaluate

removal efficiency, and the owner shall report the results of challenge testing to the commissioner. Challenge testing shall be conducted according to the criteria in paragraphs ((a)) through ((g)) of this section as follows (owners may use data from challenge testing conducted prior to January 5, 2006, if the prior testing was consistent with the criteria):

((a)) Challenge testing shall be conducted on either a full-scale membrane module, identical in material and construction to the membrane modules used in the waterworks' treatment facility, or a smaller-scale membrane module, identical in material and similar in construction to the full-scale module. A module is defined as the smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

((b)) Challenge testing shall be conducted using Cryptosporidium oocysts or a surrogate that is removed no more efficiently than Cryptosporidium oocysts. The organism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate, in both the feed and filtrate water, shall be determined using a method capable of discretely quantifying the specific challenge particulate used in the test; gross measurements such as turbidity shall not be used.

((c)) The maximum feed water concentration that can be used during a challenge test is based on the detection limit of the challenge particulate in the filtrate and shall be determined according to the following equation:

$$\text{Maximum Feed Concentration} = 3.16 \times 10^6 \times (\text{Filtrate Detection Limit})$$

((d)) Challenge testing shall be conducted under representative hydraulic conditions at the maximum design flux and maximum design process recovery specified by the manufacturer for the membrane module. Flux is defined as the throughput of a pressure driven membrane process expressed as flow per unit of membrane area. Recovery is defined as the volumetric percent of feed water that is converted to filtrate over the course of an operating cycle uninterrupted by events such as chemical cleaning or a solids removal process (i.e., backwashing).

((e)) Removal efficiency of a membrane module shall be calculated from the challenge test results and expressed as a log removal value according to the following equation:

$$LRV = LOG_{10}(C_f) - LOG_{10}(C_p)$$

where LRV = log removal value demonstrated during the challenge test; C_f = the feed concentration measured during the challenge test; and C_p = the filtrate concentration measured during the challenge test. Equivalent units shall be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, the term C_p is set equal to the detection limit for the purpose of calculating the LRV. An LRV shall be calculated for each membrane module evaluated during the challenge test.

((f)) The removal efficiency of a membrane filtration process demonstrated during challenge testing shall be expressed as a log removal value ($LRV_{C\text{-}Test}$). If fewer than 20 modules are tested, then $LRV_{C\text{-}Test}$ is equal to the lowest of the representative LRVs among the modules tested. If 20 or more modules are tested, then $LRV_{C\text{-}Test}$ is equal to the 10th percentile of the representative LRVs among the modules tested. The percentile is defined by (i/(n+1)) where i is the rank of n individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

((g)) The challenge test shall establish a quality control release value (QCRV) for a nondestructive performance test that demonstrates the Cryptosporidium removal capability of the membrane filtration module. This performance test shall be applied to each production membrane module used by the waterworks that was not directly challenge tested in order to verify Cryptosporidium removal capability. Production modules that do not meet the established QCRV are not eligible for the treatment credit demonstrated during the challenge test.

((h)) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane or the applicability of the non-destructive performance test and associated QCRV, additional challenge testing to demonstrate the removal efficiency of, and determine a new QCRV for, the modified membrane shall be conducted and submitted to the commissioner.

(iii) Direct integrity testing. Owners shall conduct direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration process and meets the requirements described in subdivision B 3 d 6 (b) (iii) ((a)) through ((f)) of this section. A direct integrity test is defined as a physical test applied to a membrane unit in order to identify and isolate integrity breaches (i.e., one or more leaks that could result in contamination of the filtrate).

((a)) The direct integrity test shall be independently applied to each membrane unit in service. A membrane unit is defined as a group of membrane modules that share common valving that allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

((b)) The direct integrity method shall have a resolution of three micrometers or less, where resolution is defined as the size of the smallest integrity breach that contributes to a response from the direct integrity test.

((c)) The direct integrity test shall have a sensitivity sufficient to verify the log treatment credit awarded to the membrane filtration process by the commissioner, where sensitivity is defined as the maximum log removal value that can be reliably verified by a direct integrity test. Sensitivity shall be determined using the approach in either of the following as applicable to the type of direct integrity test the waterworks uses:

((i)) For direct integrity tests that use an applied pressure or vacuum, the direct integrity test sensitivity shall be calculated according to the following equation:

$LRV_{DIT} = LOG_{10}(Q_p / (VCF \times Q_{breach}))$

where LRV_{DIT} = the sensitivity of the direct integrity test;

Q_p = total design filtrate flow from the membrane unit;

Q_{breach} = flow of water from an integrity breach associated with the smallest integrity test response that can be reliably measured, and

VCF = volumetric concentration factor. The volumetric concentration factor is the ratio of the suspended solids concentration on the high pressure side of the membrane relative to that in the feed water.

((ii)) For direct integrity tests that use a particulate or molecular marker, the direct integrity test sensitivity shall be calculated according to the following equation:

$LRV_{DIT} = LOG_{10}(C_f) - LOG_{10}(C_p)$

where LRV_{DIT} = the sensitivity of the direct integrity test;

C_f = the typical feed concentration of the marker used in the test; and

C_p = the filtrate concentration of the marker from an integral membrane unit.

((d)) Owners shall establish a control limit within the sensitivity limits of the direct integrity test that is indicative of an integral membrane unit capable of meeting the removal credit awarded by the commissioner.

((e)) If the result of a direct integrity test exceeds the control limit established under subdivision B 3 d (6) (b) (iii) ((d)) of this section, the owners shall remove the membrane unit from service. Owners shall conduct a direct integrity test to verify any repairs, and may return the membrane unit to service only if the direct integrity test is within the established control limit.

((f)) Owners shall conduct direct integrity testing on each membrane unit at a frequency of not less than once each day that the membrane unit is in operation. The commissioner may approve less frequent testing, based on demonstrated process reliability, the use of multiple barriers effective for Cryptosporidium, or reliable process safeguards.

(iv) Indirect integrity monitoring. Owners shall conduct continuous indirect integrity monitoring on each membrane unit according to the criteria in ((a)) through ((e)). Indirect integrity monitoring is defined as monitoring some aspect of filtrate water quality that is indicative of the removal of particulate matter. A waterworks that implements continuous direct integrity testing of membrane units in accordance with the criteria in B 3 d (6) (b) (iv) (iii) ((a)) through ((f)) of this section is not subject to the requirements for continuous indirect integrity monitoring. Owners shall submit a monthly report to the commissioner summarizing all continuous indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken in each case.

((a)) Unless the commissioner approves an alternative parameter, continuous indirect integrity monitoring shall include continuous filtrate turbidity monitoring.

((b)) Continuous monitoring shall be conducted at a frequency of no less than once every 15 minutes.

((c)) Continuous monitoring shall be separately conducted on each membrane unit.

((d)) If indirect integrity monitoring includes turbidity and if the filtrate turbidity readings are above 0.15 NTU for a period greater than 15 minutes (i.e., two consecutive 15-minute readings above 0.15 NTU), direct integrity testing shall immediately be performed on the associated membrane unit as specified in subdivision B 3 d (6) (b) (iii) ((a)) through ((f)) of this section.

((e)) If indirect integrity monitoring includes a alternative parameter approved by the commissioner and if the alternative parameter exceeds a control limit approved by the commissioner for a period greater than 15 minutes, direct integrity testing shall immediately be performed on the associated membrane units as specified in subdivision B 3 d (6) (b) (iii) ((a)) through ((f)) of this section.

(c) Second stage filtration. Waterworks receive 0.5-log Cryptosporidium treatment credit for a separate second stage of filtration that consists of sand, dual media, GAC, or other fine grain media following granular media filtration if the commissioner approves. To be eligible for this credit, the first stage of filtration shall be preceded by a coagulation step and both filtration stages shall treat the entire plant flow taken from a surface water or groundwater under the direct influence of surface water source. A cap, such as GAC, on a single stage of filtration is not eligible for this credit. The commissioner

shall approve the treatment credit based on an assessment of the design characteristics of the filtration process.

(d) Slow sand filtration (as secondary filter). Waterworks are eligible to receive 2.5-log Cryptosporidium treatment credit for a slow sand filtration process that follows a separate stage of filtration if both filtration stages treat entire plant flow taken from a surface water or ground water under the direct influence of surface water source and no disinfectant residual is present in the influent water to the slow sand filtration process. The commissioner shall approve the treatment credit based on an assessment of the design characteristics of the filtration process. This paragraph does not apply to treatment credit awarded to slow sand filtration used as a primary filtration process.

(7) Inactivation toolbox components.

(a) Calculation of CT values

(i) CT is the product of the disinfectant contact time (T, in minutes) and disinfectant concentration (C, in milligrams per liter). Owners of waterworks with treatment credit for chlorine dioxide or ozone under subdivision B 3 d (7) (b) of this section shall calculate CT at least once each day, with both C and T measured during peak hourly flow in accordance with the procedure listed in Appendix L.

(ii) Waterworks with several disinfection segments in sequence may calculate CT for each segment, where a disinfection segment is defined as a treatment unit process with a measurable disinfectant residual level and a liquid volume. Under this approach, owners shall add the Cryptosporidium CT values in each segment to determine the total CT for the treatment plant.

(b) CT values for chlorine dioxide and ozone.

(i) Waterworks receive the Cryptosporidium treatment credit listed in the following table by meeting the corresponding chlorine dioxide CT value for the applicable water temperature, as described in subdivision B 3 d (7) (a) of this section.

CT Values (mg-min/L) for Cryptosporidium Inactivation by Chlorine Dioxide[1]

Log credit	Water Temperature, C										
	Less than or equal to 0.5	1	2	3	5	7	10	15	20	25	30
0.25	159	153	140	128	107	90	69	45	29	19	12
0.5	319	305	279	256	214	180	138	89	58	38	24
1.0	637	610	558	511	429	360	277	179	116	75	49
1.5	956	915	838	767	643	539	415	268	174	113	73
2.0	1275	1220	1117	1023	858	719	553	357	232	150	98
2.5	1594	1525	1396	1278	1072	899	691	447	289	188	122
3.0	1912	1830	1675	1534	1286	1079	830	536	347	226	147

[FN1] Waterworks may use this equation to determine log credit between the indicated values:

Log credit = $(0.001506 \times (1.09116)^{Temp}) \times CT$

(ii) Waterworks receive the Cryptosporidium treatment credit listed in the following table by meeting the corresponding ozone CT values for the applicable water temperature, as described in subdivision B 3 d (7) (a) of this section.

CT Values (mg-min/L) for Cryptosporidium Inactivation by Ozone[1]

Log credit	Water Temperature, °C										
	Less than or equal to 0.5	1	2	3	5	7	10	15	20	25	30
0.25	6.0	5.8	5.2	4.8	4.0	3.3	2.5	1.6	1.0	0.6	0.39
0.5	12	12	10	9.5	7.9	6.5	4.9	3.1	2.0	1.2	0.78
1.0	24	23	21	19	16	13	9.9	6.2	3.9	2.5	1.6

1.5	36	35	31	29	24	20	15	9.3	5.9	3.7	2.4
2.0	48	46	42	38	32	26	20	12	7.8	4.9	3.1
2.5	60	58	52	48	40	33	25	16	9.8	6.2	3.9
3.0	72	69	63	57	47	39	30	19	12	7.4	4.7

FN1 Waterworks may use this equation to determine log credit between the indicated values:

Log credit = $(0.0397\times(1.09757)^{Temp})\times CT$

(c) Ultraviolet light. Waterworks receive Cryptosporidium, Giardia lamblia, and virus treatment credits for ultraviolet (UV) light reactors by achieving the corresponding UV dose values shown in subdivision B 3 d (7) (c) (i) of this section. Waterworks shall validate and monitor UV reactors as described in subdivision B 3 d (7) (c) (ii) and (iii) of this section to demonstrate that they are achieving a particular UV dose value for treatment credit.

(i) UV dose table. The treatment credits listed in this table are for UV light at a wavelength of 254 nm as produced by a low pressure mercury vapor lamp. To receive treatment credit for other lamp types, waterworks shall demonstrate an equivalent germicidal dose through reactor validation testing, as described in subdivision B 3 d (7) (c) (ii) of this section. The UV dose values in this table are applicable only to post-filter applications of UV in filtered systems.

UV dose table for Cryptosporidium, Giardia lamblia, and virus inactivation credit

Log credit	Cryptosporidium UV dose (mJ/cm2)	Giardia lamblia UV dose (mJ/cm2)	Virus UV dose (mJ/cm2)
0.5	1.6	1.5	39
1.0	2.5	2.1	58
1.5	3.9	3.0	79
2.0	5.8	5.2	100
2.5	8.5	7.7	121
3.0	12	11	143
3.5	15	15	163
4.0	22	22	186

(ii) Reactor validation testing. Waterworks shall use UV reactors that have undergone validation testing to determine the operating conditions under which the reactor delivers the UV dose required in subdivision B 3 d (7) (c) (i) of this section (i.e., validated operating conditions). These operating conditions shall include flow rate, UV intensity as measured by a UV sensor, and UV lamp status.

((a)) When determining validated operating conditions, owners shall account for the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of online sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps or other critical waterworks components; and inlet and outlet piping or channel configurations of the UV reactor.

((b)) Validation testing shall include the following: full scale testing of a reactor that conforms uniformly to the UV reactors used by the waterworks and inactivation of a test microorganism whose dose response characteristics have been quantified with a low pressure mercury vapor lamp.

(iii) Reactor monitoring.

((a)) Owners shall monitor their UV reactors to determine if the reactors are operating within validated conditions, as determined under subdivision B 3 d (7) (c) (ii) of this section. This monitoring shall include UV intensity as measured by a UV sensor, flow rate, lamp status, and other parameters the commissioner designates based on UV reactor operation. Owners shall verify the calibration of UV sensors and shall recalibrate sensors in accordance with a protocol the commissioner approves.

((b)) To receive treatment credit for UV light, waterworks shall treat at least 95% of the water delivered to the public during each month by UV reactors operating within validated conditions for the required UV dose, as described in subdivision B 3 d (7) (c) (i) and (ii) of this section. Owners shall demonstrate compliance with this condition by the monitoring required under subdivision B 3 d (7) (c) (iii)((a)) of this section.

e. Owners shall comply with the applicable recordkeeping and reporting requirements described in 12VAC5-590-530 and 12VAC5-590-550.

C. Lead and copper corrosion control treatment requirements.

1. The owners of all community and nontransient noncommunity waterworks shall install and operate optimum corrosion control treatment by completing the corrosion control treatment requirements described below which are applicable to such waterworks owners under subdivision C 2 of this section.

a. ~~Waterworks owners~~ Owners proposal regarding corrosion control treatment. Based upon the results of

lead and copper tap monitoring and water quality parameter monitoring, the owners of small and medium-size waterworks exceeding the lead or copper action level shall propose installation of one or more of the corrosion control treatments listed in subdivision C 1 c (1) of this section which the waterworks owner believes constitutes optimal corrosion control for that waterworks. The commissioner may require the waterworks owner to conduct additional water quality parameter monitoring in accordance with 12VAC5-590-370 B 6 b (2) of this section to assist the commissioner in reviewing the proposal.

b. Applicability of studies of corrosion control treatment (applicable to small and medium-size waterworks). The commissioner may require the owner of any small or medium-size waterworks that exceeds the lead or copper action level to perform corrosion control studies under subdivision C 1 c of this section to identify optimal corrosion control treatment for the waterworks.

c. Corrosion control studies.

(1) The owner of any waterworks required by the commissioner to perform corrosion control studies shall evaluate the effectiveness of each of the following treatments, and, if appropriate, combinations of the following treatments to identify the optimal corrosion control treatment for that waterworks:

(a) Alkalinity and pH adjustment;

(b) Calcium hardness adjustment; and

(c) The addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective corrosion inhibitor residual concentration in all test tap samples.

(2) The ~~waterworks~~ owner shall evaluate each of the corrosion control treatments using either pipe rig/loop tests, metal coupon tests, partial-system tests, or analyses based on documented analogous treatments with other waterworks of similar size, water chemistry and distribution system configuration.

(3) The ~~waterworks~~ owner shall measure the following water quality parameters in any tests conducted under this paragraph before and after evaluating the corrosion control treatments listed above:

(a) Lead;

(b) Copper;

(c) pH;

(d) Alkalinity;

(e) Calcium;

(f) Conductivity;

(g) Orthophosphate (when an inhibitor containing a phosphate compound is used);

(h) Silicate (when an inhibitor containing a silicate compound is used);

(i) Water temperature.

(4) The ~~waterworks~~ owner shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document such constraints with at least one of the following:

(a) Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another waterworks with comparable water quality characteristics; and/or

(b) Data and documentation demonstrating that the waterworks has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(5) The ~~waterworks~~ owner shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes.

(6) On the basis of an analysis of the data generated during each evaluation, the waterworks owner shall propose to the field office in writing, the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that waterworks. The owner shall provide a rationale for its recommendation along with all supporting documentation specified in subdivision C 1 c (1) through (5) of this section.

d. Approval of optimal corrosion control treatment.

(1) Based upon consideration of available information including, where applicable, studies performed under subdivision C 1 c of this section and ~~a waterworks'~~ an owner's proposed treatment alternative, the commissioner shall either approve the corrosion control treatment option recommended by the owner, or designate alternative corrosion control treatment(s) from among those listed in subdivision C 1 c (1) of this section. When approving optimal treatment the commissioner shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(2) The commissioner shall notify the ~~waterworks~~ owner of ~~its~~ the determination on optimal corrosion control treatment in writing and explain the basis for this determination. If the commissioner requests additional information to aid a review, the owner shall provide the information.

e. Installation of optimal corrosion control. Each waterworks owner shall properly install and operate throughout the waterworks the optimal corrosion control treatment approved by the commissioner under subdivision C 1 d of this section and under 12VAC5-590-190.

f. Commissioner's review of treatment and specification of optimal water quality control parameters.

(1) The commissioner shall evaluate the results of all lead and copper tap samples and water quality parameter samples submitted by the ~~waterworks~~ owner and determine whether the owner has properly installed and operated the optimal corrosion control treatment approved by the commissioner in subdivision C 1 d of this section. Upon reviewing the results of tap water and water quality parameter monitoring by the owner, both before and after the waterworks installs optimal corrosion control treatment, the commissioner shall designate:

(a) A minimum value or a range of values for pH measured at each entry point to the distribution system;

(b) A minimum pH value, measured in all tap samples. Such value shall be equal to or greater than 7.0, unless the commissioner determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the ~~waterworks~~ owner to optimize corrosion control;

(c) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the commissioner determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system;

(d) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples;

(e) if calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

(2) The values for the applicable water quality control parameters listed above shall be those that the commissioner determines to reflect optimal corrosion control treatment for the waterworks. The commissioner may designate values for additional water quality control parameters determined by the commissioner to reflect optimal corrosion control for the waterworks. The commissioner shall notify the ~~waterworks~~ owner in writing of these determinations and explain the basis for ~~its~~ the decisions.

g. Continued operation and monitoring. The owners of all waterworks optimizing corrosion control shall continue to operate and maintain optimum corrosion control treatment, including maintaining water quality parameters at or above minimum values or within ranges designated by the commissioner under subdivision C 1 f of this section, in accordance with this paragraph for all samples collected under 12VAC5-590-370 B 6 b (4), (5) and (6). Compliance with the requirements of this paragraph shall be determined every six months, as specified under 12VAC5-590-370 B 6 b (4). The owner of a waterworks is out of compliance with the requirements of this paragraph for a six-month period if excursions occur for any commissioner-specified parameter on more than nine days during the period. An excursion occurs whenever the daily value for one or more of the water quality parameters measured at a sampling location is below the minimum value or outside the range designated by the commissioner. Daily values ~~are~~ shall be calculated as follows. The commissioner has discretion to delete results of obvious sampling errors from this calculation.

(1) On days when more than one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the average of all results collected during the day regardless of whether they are collected through continuous monitoring, grab sampling, or a combination of both.

(2) On days when only one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the result of that measurement.

(3) On days when no measurement is collected for the water quality parameter at the sampling location, the daily value shall be the daily value calculated on the most recent day on which the water quality parameter was measured at the sample site.

h. Modification of the commissioner's treatment decisions. Upon his own initiative or in response to a request by ~~a waterworks~~ an owner or other interested party, the commissioner may modify ~~its~~ the determination of the optimal corrosion control treatment under subdivision C 1 d of this section or optimal water quality control parameters under subdivision C 1 f of this section. A request for modification by an owner or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The commissioner may modify the determination where it is concluded that such change is necessary to ensure that the waterworks continues to optimize corrosion control treatment. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the commissioner's decision, and provide an implementation schedule for completing the treatment modifications.

2. Corrosion control treatment steps.

a. ~~Waterworks owners~~ Owners shall complete the applicable corrosion control treatment requirements described in subdivision C 1 of this section by the deadlines established in this section.

(1) ~~The owner~~ Owners of ~~a~~ large waterworks (serving greater than 50,000 persons) shall complete the corrosion control treatment steps specified in subdivision C 2 d of this section, unless the owner is deemed to have optimized corrosion control under subdivision C 2 b (2) of this section or C 2 b (3) of this section.

(2) ~~The owner~~ Owners of ~~a~~ small waterworks (serving less than 3,300 persons) and ~~a~~ medium-size waterworks (serving greater than 3,300 and less than 50,000 persons) shall complete the corrosion control treatment steps specified in subdivision C 2 e of this section, unless the owner is deemed to have optimized corrosion control under subdivision C 2 b (1) through (3) of this section.

b. ~~A waterworks~~ An owner is deemed to have optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this section if the waterworks satisfies one of the criteria specified in subdivisions C 2 b (1) through (3) below. The owner of any such waterworks that is deemed to have optimized corrosion control, and which has treatment in place, shall continue to operate and maintain optimal corrosion control treatment and meet any requirements that the commissioner determines appropriate to ensure optimal corrosion control treatment is maintained.

(1) The owner of a small or medium-size waterworks is deemed to have optimized corrosion control if the waterworks meets the lead and copper action levels during each of two consecutive six-month monitoring periods conducted in accordance with 12VAC5-590-370 B 6 a.

(2) Any ~~waterworks~~ owner may be deemed by the commissioner to have optimized corrosion control treatment if the owner demonstrates to the satisfaction of the commissioner that the owner has conducted activities equivalent to the corrosion control steps applicable to such waterworks under this section. If the commissioner makes this determination, the owner shall be provided with a written notice explaining the basis for the decision and the notice shall specify the water quality control parameters representing optimal corrosion control in accordance with subdivision C 1 f of this section. Any ~~waterworks~~ owner deemed to have optimized corrosion control under this paragraph shall operate in compliance with the specified water quality control parameters in accordance with subdivision C 1 g of this section and continue to conduct lead and copper tap and water quality parameter sampling in accordance with 12VAC5-590-370 B 6 a (4) c and 12VAC5-590-370 B 6 b (4), respectively. The ~~waterworks~~ owner shall provide the district engineer with the following information in order to support a determination under this paragraph:

(a) The results of all test samples collected for each of the water quality parameters in subdivision C 1 c (3) of this section.

(b) A report explaining the test methods used by the ~~waterworks~~ owner to evaluate the corrosion control treatments listed in subdivision C 1 c (1) of this section, the results of all tests conducted, and the basis for the owner's selection of optimal corrosion control treatment;

(c) A report explaining how corrosion control has been installed and how it is being maintained to insure minimal lead and copper concentrations at consumers' taps; and

(d) The results of tap water samples collected in accordance with 12VAC5-590-370 B 6 a at least once every six months for one year after corrosion control has been installed.

(3) Any waterworks is deemed to have optimized corrosion control if the owner submits results of tap water monitoring conducted in accordance with 12VAC5-590-370 B 6 a and source water monitoring conducted in accordance with 12VAC5-590-370 B 6 c that demonstrates for two consecutive six-month monitoring periods that the difference between the 90th percentile tap water lead level computed under 12VAC5-590-410 E, and the highest source water lead concentration, is less than the ~~P Q L~~ PQL for lead (0.005 mg/L).

(a) Any ~~waterworks~~ owner that submits monitoring results indicating that the highest source water lead level is below the Method Detection Limit may also be deemed to have optimized corrosion control under this paragraph if the 90th percentile tap water lead level is less than or equal to the PQL for lead for two consecutive six-month monitoring periods.

(b) Any ~~waterworks~~ owner deemed to have optimized corrosion control under this paragraph shall continue monitoring for lead and copper at the tap no less frequently than once every three calendar years using the reduced number of sites specified in 12VAC5-590-370 B 6 a (3) and collecting the samples at times and locations specified in 12VAC5-590-370 B 6 a (4) (d) (iv). Any such ~~waterworks~~ owner that has not conducted a round of monitoring pursuant to 12VAC5-590-370 B 6 a (4) Since September 30, 1997, shall complete a round of monitoring pursuant to this paragraph no later than September 30, 2000.

(c) Any ~~waterworks~~ owner deemed to have optimized corrosion control pursuant to this paragraph shall notify

the district engineer in writing pursuant to 12VAC5-590-530 D 1 c of any change in treatment or the addition of a new water source. The commissioner may require the owner of any such waterworks to conduct additional monitoring or to take other actions the commissioner deems appropriate to ensure that minimum levels of corrosion control are being maintained in the distribution system.

(d) As of July 12, 2001, ~~a waterworks~~ an owner is not deemed to have optimized corrosion control under this paragraph, and shall implement corrosion control treatment specified in subdivision C 2 b (3) e of this section unless the copper action level is met.

(e) The owner of a ~~Any~~ waterworks ~~owner~~ triggered into corrosion control because the waterworks no longer is deemed to have optimized corrosion control under this paragraph shall implement corrosion control treatment in accordance with the deadlines in subdivision C 2 e of this section. The owner of any such large waterworks shall adhere to the schedule specified in that paragraph for medium-size systems, with the time period for completing each step being triggered by the date the ~~waterworks~~ owner is no longer deemed to have optimized corrosion control treatment under this paragraph.

c. The owner of any small or medium-size waterworks that is required to complete the corrosion control steps due to the exceedance of the lead or copper action level may cease completing the treatment steps whenever the waterworks meets both action levels during each of two consecutive monitoring periods conducted pursuant to 12VAC5-590-370 B 6 a and the owner submits the results to the ~~field office~~ district engineer. If any such waterworks thereafter exceeds the lead or copper action level during any monitoring period, the owner shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety. The commissioner may require the owner to repeat treatment steps previously completed where the commissioner determines that this is necessary to properly implement the treatment requirements of this section. The commissioner shall notify the owner in writing of such a determination and explain the basis for its decision. The requirement for the owner of any small- or medium-sized waterworks to implement corrosion control treatment steps in accordance with subdivision 2 e of this subsection (including waterworks deemed to have optimized corrosion control under subdivision 2 b (1) of this subsection) is triggered whenever any small- or medium-sized waterworks exceeds the lead or copper action level.

d. Treatment steps and deadlines for large waterworks. Except as provided in subdivisions C 2 b (2) and (3) of this section, owners of large waterworks shall complete the following corrosion control treatment steps (described in the referenced portions of subdivision C 1 of this section, 12VAC5-590-370 B 6 a and b) by the indicated dates.

(1) Step 1: The ~~waterworks~~ owner shall conduct initial monitoring (12VAC5-590-370 B 6 a (4) (a) and B 6 b (2)) during two consecutive six-month monitoring periods by January 1, 1993.

(2) Step 2: The ~~waterworks~~ owner shall complete corrosion control studies (12VAC5-590-420 C 1 c) and submit the study and recommendations to the commissioner (12VAC5-590-200) by July 1, 1994.

(3) Step 3: The commissioner shall approve optimal corrosion control treatment (12VAC5-590-420 C 1 d) by January 1, 1995.

(4) Step 4: The ~~waterworks~~ owner shall install optimal corrosion control treatment (12VAC5-590-420 C 1 e) by January 1, 1997.

(5) Step 5: The ~~waterworks~~ owner shall complete follow-up sampling (12VAC5-590-370 B 6 a (4) (b) and B 6 b (3)) by January 1, 1998.

(6) Step 6: The commissioner shall review installation of treatment and designate optimal water quality control parameters (12VAC5-590-420 C 1 f) by July 1, 1998.

(7) Step 7: The ~~waterworks~~ owner shall operate the waterworks in compliance with the commissioner-specified optimal water quality control parameters (12VAC5-590-420 C 1 g) and continue to conduct tap sampling (12VAC5-590-370 B 6 a (4) (c) and B 6 b (4)).

e. Treatment steps and deadlines for small and medium-size waterworks. Except as provided in 12VAC5-590-420 C 2 b, owners of small- and medium-size waterworks shall complete the following corrosion control treatment steps (described in the referenced portions of 12VAC5-590-420 C 1, 12VAC5-590-370 B 6 a and b) by the indicated time periods.

(1) Step 1: The ~~waterworks~~ owner shall conduct initial tap sampling (12VAC5-590-370 B 6 a (4) (a) and B 6 b (2)) until the waterworks either exceeds the lead or copper action level or becomes eligible for reduced monitoring under 12VAC5-590-370 B 6 a (4) (d). The owner of a waterworks exceeding the lead or copper action level shall propose optimal corrosion control treatment (12VAC5-590-420 C 1 a) within six months after it exceeds one of the action levels.

(2) Step 2: Within 12 months after a waterworks exceeds the lead or copper action level, the commissioner may

require the ~~waterworks~~ owner to perform corrosion control studies (12VAC5-590-420 C 1 b). If the commissioner does not require the owner to perform such studies, the commissioner shall specify optimal corrosion control treatment (12VAC5-590-420 C 1 d) within the following timeframes:

(a) For medium-size waterworks, within 18 months after such waterworks exceeds the lead or copper action level;

(b) For small waterworks, within 24 months after such waterworks exceeds the lead or copper action level.

(3) Step 3: If the commissioner requires ~~a waterworks~~ an owner to perform corrosion control studies under Step 2, the ~~waterworks~~ owner shall complete the studies (12VAC5-590-420 C 1 c) and submit the study and recommendations to the commissioner (12VAC5-590-200) within 18 months after the commissioner requires that such studies be conducted.

(4) Step 4: If the waterworks has performed corrosion control studies under Step 2, the commissioner shall designate optimal corrosion control treatment (12VAC5-590-420 C 1 d) within six months after completion of Step 3.

(5) Step 5: The ~~waterworks~~ owner shall install optimal corrosion control treatment (12VAC5-590-420 C 1 e) within 24 months after the commissioner designates such treatment.

(6) Step 6: The ~~waterworks~~ owner shall complete follow-up sampling (12VAC5-590-370 B 6 a (4) (b) and B 6 b (3)) within 36 months after the commissioner designates optimal corrosion control treatment.

(7) Step 7: The commissioner shall review the ~~waterworks~~ owner's installation of treatment and designate optimal water quality control parameters (12VAC5-590-420 C 1 f) within six months after completion of Step 6.

(8) Step 8: The ~~waterworks~~ owner shall operate in compliance with the commissioner designated optimal water quality control parameters (12VAC5-590-420 C 1 g) and continue to conduct tap sampling (12VAC5-590-370 B 6 a (4) (c) and B 6 b (4)).

D. Water supply (source water) treatment requirements for lead and copper. The owner of any waterworks exceeding the lead or copper action level shall complete the applicable water supply monitoring and treatment requirements (described in the referenced portions of subdivision D 2 of this section, and in 12VAC5-590-370 B 6 a and c) by the following deadlines.

1. Deadlines for completing water supply treatment steps.

a. Step 1: The owner of a waterworks exceeding the lead or copper action level shall complete lead and copper water supply monitoring (12VAC5-590-370 B 6 c (2)) and make a treatment proposal to the ~~appropriate field office~~ district engineer within six months after exceeding the lead or copper action level.

b. Step 2: The commissioner shall make a determination regarding the need for water supply treatment (12VAC5-590-420 D 2 b) within six months after submission of monitoring results under Step 1.

c. Step 3: If the commissioner requires installation of water supply treatment, the waterworks owner shall install the treatment (12VAC5-590-420 D 3) within 24 months after completion of Step 2.

d. Step 4: The ~~waterworks~~ owner shall complete follow-up tap water monitoring (12VAC5-590-370 B 6 a (4) (b)) and water supply lead and copper monitoring (12VAC5-590-370 B 6 c (3)) within 36 months after completion of Step 2.

e. Step 5: The commissioner shall review the ~~waterworks~~ owner's installation and operation of water supply treatment and specify maximum permissible water supply lead and copper levels (12VAC5-590-420 D 4) within six months after completion of Step 4.

f. Step 6: The ~~waterworks~~ owner shall operate in compliance with the commissioner-specified maximum permissible lead and copper water supply levels (12VAC5-590-420 D 4) and continue water supply monitoring (12VAC5-590-370 B 6 c (4) (a)).

2. Description of water supply treatment requirements.

a. Waterworks treatment recommendation. The owner of any waterworks which exceeds the lead or copper action level shall propose in writing to the appropriate field office, the installation and operation of one of the water supply treatments listed in subdivision D 2 b of this section. An owner may propose that no treatment be installed based upon a demonstration that water supply treatment is not necessary to minimize lead and copper levels at users' taps.

b. Commissioner's determination regarding water supply treatment. The commissioner shall complete an evaluation of the results of all water supply samples submitted by the ~~waterworks~~ owner to determine whether water supply treatment is necessary to minimize lead or copper levels in water delivered to users' taps. If the ~~division~~ commissioner determines that treatment is needed, the commissioner shall either require installation and operation of the water supply treatment recommended by the waterworks (if any) or require the installation and operation of another water supply treatment from among the following: ion exchange, reverse osmosis, lime softening or coagulation/filtration. If the commissioner requests additional information to

aid in the review, the ~~waterworks~~ owner shall provide the information by the date specified by the commissioner in the request. The commissioner shall notify the ~~waterworks~~ owner in writing of the determination and set forth the basis for the decision.

3. Installation of water supply treatment. Each ~~waterworks~~ owner shall properly install and operate the water supply treatment designated by the commissioner under subdivision D 2 b of this section.

4. Commissioner's review of water supply treatment and specification of maximum permissible water supply lead and copper levels. The commissioner shall review the water supply samples taken by the ~~waterworks~~ owner both before and after the ~~waterworks~~ owner installs water supply treatment, and determine whether the owner has properly installed and operated the water supply treatment designated by the commissioner. Based upon the review, the commissioner shall designate the maximum permissible lead and copper concentrations for finished water entering the distribution system. Such levels shall reflect the contaminant removal capability of the treatment properly operated and maintained. The commissioner shall notify the owner in writing and explain the basis for the decision.

5. Continued operation and maintenance. Each waterworks shall be operated to maintain lead and copper levels below the maximum permissible concentrations designated by the commissioner at each sampling point monitored in accordance with 12VAC5-590-370 B 6 c. The waterworks is out of compliance with this subdivision if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the commissioner.

6. Modification of the commissioner's treatment decisions. Upon his own initiative or in response to a request by a waterworks owner or other interested party, the commissioner may modify its determination of the water supply treatment under subdivision D 2 b of this section, or may modify the maximum permissible lead and copper concentrations for finished water entering the distribution system under subdivision D 4 of this section. A request for modification by an owner or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The commissioner may modify the determination where he concludes that such change is necessary to ensure that the waterworks continues to minimize lead and copper concentrations in water supplies. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the commissioner's decision, and provide an implementation schedule for completing the treatment modifications.

E. Lead service line replacement requirements.

1. Owners of waterworks that fail to meet the lead action level in tap samples taken pursuant to 12VAC5-590-370 B 6 a (4) (b), after installing corrosion control and/or water supply treatment (whichever sampling occurs later), shall replace lead service lines in accordance with the requirements of this section. If a waterworks is in violation of subdivision C 2 of this section or subsection D of this section for failure to install water supply or corrosion control treatment, the commissioner may require the owner to commence lead service line replacement under this section after the date by which the owner was required to conduct monitoring under 12VAC5-590-370 B 6 a (4) (b) has passed.

2. ~~A waterworks~~ An owner shall replace annually at least 7.0% of the initial number of lead service lines in its distribution system. The initial number of lead service lines is the number of lead lines in place at the time the replacement program begins. The waterworks owner shall identify the initial number of lead service lines in its distribution system, including an identification of the portion or portions owned by the waterworks, based upon a materials evaluation, including the evaluation required under 12VAC5-590-370 B 6 a (1) (a) and relevant authorities (e.g., contracts, local ordinances) regarding the portion owned by the waterworks. The first year of lead service line replacement shall begin on the date the action level was exceeded in tap sampling referenced in subdivision E 1 of this section.

3. ~~A waterworks~~ An owner is not required to replace an individual lead service line if the lead concentration in all service line samples from that line, taken pursuant to 12VAC5-590-370 B 6 a (2) (c), is less than or equal to 0.015 mg/L.

4. ~~A waterworks~~ An owner shall replace that portion of the lead service line that is owned by the waterworks. In cases where the waterworks owner does not own the entire lead service line, the waterworks owner shall notify the building owner, or the building owner's authorized agent, that the waterworks owner will replace that portion of the service line that is owned by the waterworks and shall offer to replace the building owner's portion of the line. The waterworks owner is not required to bear the cost of replacing the building owner's portion of the service line, nor is the waterworks owner required to replace the building owner's portion where the waterworks owner chooses not to pay the cost of replacing the building owner's portion of the line, or where replacing the building owner's portion would be precluded by state, local or common law. A waterworks owner that does not replace the entire length of the service line also shall complete the following tasks.

a. At least 45 days prior to commencing with the partial replacement of a lead service line, the waterworks owner

shall provide notice to the resident or residents of all buildings served by the line explaining that they may experience a temporary increase of lead levels in their drinking water, along with guidance on measures consumers can take to minimize their exposure to lead. The commissioner may allow the waterworks owner to provide notice under the previous sentence less ~~that~~ than 45 days prior to commencing partial lead service line replacement where such replacement is in conjunction with emergency repairs. In addition, the waterworks owner shall inform the resident or residents served by the line that the waterworks owner will, at the waterworks owner's expense, collect a sample from each partially-replaced lead service line that is representative of the water in the service line for analysis of lead content, as prescribed in 12VAC5-590-370 B 6 a (2) (c), within 72 hours after the completion of the partial replacement of the lead service line. The waterworks owner shall collect the sample and report the results of the analysis to the building owner and resident or residents served by the line within three business days of receiving the results. Mailed notices post-marked within three business days of receiving the results shall be considered "on time."

b. The waterworks owner shall provide the information required by subdivision E 4 a of this section to the residents of individual dwellings by mail or by other methods approved by the commissioner. In instances where multi-family dwellings are served by the line, the waterworks owner shall have the option to post the information at a conspicuous location.

5. The commissioner shall require a waterworks owner to replace lead service lines on a shorter schedule than that required by this section, taking into account the number of lead service lines in the waterworks, where such a shorter replacement schedule is feasible. The commissioner shall make this determination in writing and notify the owner of the findings within 6 months after the waterworks is triggered into lead service line replacement based on monitoring referenced in subdivision E 1 of this section.

6. Any waterworks owner may cease replacing lead service lines whenever first draw tap samples collected pursuant to 12VAC5-590-370 B 6 a (2) (b) meet the lead action level during each of two consecutive monitoring periods and the owner submits the results to the ~~appropriate~~ district engineer. If the first draw tap samples collected in any such waterworks thereafter exceeds the lead action level, the owner shall recommence replacing lead service lines, pursuant to subdivision E 2 of this section.

7. To demonstrate compliance with subdivisions E 1 through E 4 of this section, a waterworks owner shall report to the ~~appropriate field office~~ district engineer the information specified in 12VAC5-590-530 d 5.

F. Lead public education requirements. The owner of a waterworks that exceeds the lead action level based on tap water samples collected in accordance with 12VAC5-590-370 B 6 a shall deliver the public education materials contained in subdivisions F 1 and 2 of this section in accordance with the requirements in subdivision F 3 of this section.

1. Content of written public education materials. A waterworks owner shall include the following text in all of the printed materials distributed through the lead public education program.

a. Community waterworks. The owner of a community waterworks shall include the following text in all of the printed materials it distributes through the lead public education program. Waterworks owners may delete information pertaining to lead service line replacement, upon approval by the commissioner, if no lead service lines exist anywhere in the waterworks service area. Public education language in subdivisions F 1 a (4) (b) (v) and F 1 a (4) (d) (ii) of this section may be modified regarding building permit record availability and consumer access to these records, if approved by the commissioner. Waterworks owners may also continue to utilize pre-printed materials that meet the public education language requirements in 40 CFR 141.85, effective November 6, 1991, and contained in the 40 CFR Parts 100 to 149, edition revised as of July 1, 1991. Any additional information presented by a waterworks owner shall be consistent with the information below and be in plain English that can be understood by lay people.

(1) Introduction. The United States Environmental Protection Agency (EPA) and (insert name of waterworks) are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under Federal law we are required to have a program in place to minimize lead in your drinking water by (insert date when corrosion control will be completed for your waterworks). This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace the portion of each lead service line that we own if the line contributes lead concentrations of more than 15 ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at (insert waterworks phone number). This brochure explains the simple steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

(2) Health effects of lead. Lead is a common metal found throughout the environment in lead-based paint, air, soil,

household dust, food, certain types of pottery porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that will not hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination like dirt and dust that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(3) Lead in drinking water.

(a) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20% or more of a person's total exposure to lead.

(b) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome plated brass faucets, and in some cases, pipes made of lead that connect your house to the water main (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

(c) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon after returning from work or school, can contain fairly high levels of lead.

(4) Steps you can take in the home to reduce exposure to lead in drinking water.

(a) Despite our best efforts mentioned earlier to control water corrosivity and remove lead from the water supply, lead levels in some homes or buildings can be high. To find out whether you need to take action in your own home, have your drinking water tested to determine if it contains excessive concentrations of lead. Testing the water is essential because you cannot see, taste, or smell lead in drinking water. Some local laboratories that can provide this service are listed at the end of this booklet. (The waterworks owners should contact the Division of Consolidated Laboratory Services at (804) 786-3411 for a list of certified laboratories in their area). For more information on having your water tested, please call (insert phone number of waterworks).

(b) If a water test indicates that the drinking water drawn from a tap in your home contains lead above 15 ppb, then you should take the following precautions:

(i) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in your home's plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15-30 seconds. If your house has a lead service line to the water main, you may have to flush the water for a longer time, perhaps one minute, before drinking. Although toilet flushing or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one or two gallons of water and costs less than (insert a cost estimate based on flushing two times a day for 30 days) per month. To conserve water, fill a couple of bottles for drinking water after flushing the tap, and whenever possible use the first flush water to wash the dishes or water the plants. If you live in a high-rise building, letting the water flow before using it may not work to lessen your risk from lead. The plumbing systems have more, and sometimes larger pipes than smaller buildings. Ask your landlord for help in locating the source of the lead and for advice on reducing the lead level.

(ii) Try not to cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it on the stove or microwave.

(iii) Remove loose lead solder and debris from the plumbing materials installed in newly constructed homes, or homes in which the plumbing has recently been replaced, by removing the faucet strainers from all taps and running the water from three to five minutes. Thereafter, periodically remove the strainers and flush out any debris that has accumulated over time.

(iv) If your copper pipes are joined with lead solder that has been installed illegally since it was banned in 1986, notify the plumber who did the work and request that he replace the lead solder with lead-free solder. Lead solder looks dull gray, and when scratched with a key looks shiny. In addition, notify the local building official in your city or county.

(v) Determine whether the service line that connects your home or apartment to the water main is made of lead.

The best way to determine if your service line is made of lead is by either hiring a licensed plumber to inspect the line or by contacting the plumbing contractor who installed the line. You can identify the plumbing contractor by checking your localities' record of building permits which should be maintained in the files of the (insert name of department that issues building permits). A licensed plumber can at the same time check to see if your home's plumbing contains lead solder, lead pipes, or pipe fittings that contain lead. The waterworks that delivers water to your home should also maintain records of the materials located in the distribution system. If the service line that connects your dwelling to the water main contributes more than 15 ppb to drinking water, after our comprehensive treatment program is in place, we are required to replace the portion of the line we own. Since the line is only partially owned by the (insert the name of the city, county, or waterworks that owns the line), we are required to provide the owner of the privately-owned portion of the line with information on how to replace the privately-owned portion of the service line, and offer to replace that portion of the line at the line owner's expense. If we replace only the portion of the line that we own, we also are required to notify you in advance and provide you with information on the steps you can take to minimize exposure to any temporary increase in lead levels that may result from the partial replacement, to take a follow-up sample at our expense from the line within 72 hours after the partial replacement, and to mail or otherwise provide you with the results of that sample within three business days of receiving the results. Acceptable replacement alternatives include copper, steel, iron, and plastic pipes and ~~must~~ shall comply with local plumbing codes.

(vi) Have an electrician check your wiring. If grounding wires from the electrical system are attached to your pipes, corrosion may be greater. Check with a licensed electrician or your local electrical code to determine if your wiring can be grounded elsewhere. DO NOT attempt to change the wiring yourself because improper grounding can cause electrical shock and fire hazards.

(c) The steps described above will reduce the lead concentrations in your drinking water. However, if a water test indicates that the drinking water coming from your tap contains lead concentrations in excess of 15 ppb after flushing, or after we have completed our actions to minimize lead levels, then you may want to take the following additional measures.

(i) Purchase or lease a home treatment device. Home treatment devices are limited in that each unit treats only the water that flows from the faucet to which it is connected, and all of the devices require periodic maintenance and replacement. Devices such as reverse osmosis systems or distillers can effectively remove lead from your drinking water. Some activated carbon filters may reduce lead levels at the tap, however all lead reduction claims should be investigated. Be sure to check the actual performance of a specific home treatment device before and after installing the unit.

(ii) Purchase bottled water for drinking and cooking.

(d) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(i) (Insert the name of the waterworks) at (insert phone number) can provide you with information about your community's waterworks and a list of local laboratories that have been certified by Division of Consolidated Laboratory Services for testing water quality.

(ii) (Insert the name of city or county department that issues building permits) at (insert phone number) can provide you with information about building permit records that should contain the names of plumbing contractors that plumbed your home.

(iii) The Medical Director of (Insert the name of the city or county) Health Department, and the Virginia Department of Health Division of Child and Adolescent Health, Lead Safe Virginia Program Director at 1-877-668-7987 can provide you with information about the health effects of lead and how you can have your child's blood tested.

(e) The following is a list of some state-approved laboratories in your area that you can call to have your water tested for lead. (Insert names and phone numbers of at least two laboratories.)

b. Nontransient noncommunity waterworks. The owner of a nontransient noncommunity waterworks shall either include the text specified in subdivision F 1 a of this section or shall include the following text in all of the printed materials it distributes through its lead public education program. The ~~waterworks~~ owner may delete information pertaining to lead service lines upon approval by the commissioner if no lead service lines exist anywhere in the waterworks service area. Any additional information presented by a waterworks owner shall be consistent with the information below and be in plain English that can be understood by lay people.

(1) Introduction. The United States Environmental Protection Agency (EPA) and (insert name of waterworks) are concerned about lead in your drinking water. Some drinking water samples taken from this facility have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter (mg/L)of water. Under federal law we are required

to have a program in place to minimize lead in your drinking water by (insert date when corrosion control will be completed for your waterworks). This program includes corrosion control treatment, water supply treatment, and public education. We are also required to replace the portion of each lead service line that we own if the line contributes lead concentrations of more than 15 ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation, please give us a call at (insert waterworks phone number). This brochure explains the simple steps you can take to protect yourself by reducing your exposure to lead in drinking water.

(2) Health effects of lead. Lead is found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery, porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination like dirt and dust that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(3) Lead in drinking water.

(a) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20% or more of a person's total exposure to lead.

(b) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome-plated brass faucets, and in some cases, pipes made of lead that connect houses and buildings to water mains (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

(c) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon if the water has not been used all day, can contain fairly high levels of lead.

(4) Steps you can take to reduce exposure to lead in drinking water.

(a) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in plumbing the more lead it may contain. Flushing the tap means running the cold water faucet for about 15 to 30 seconds. Although toilet flushing or showering flushes water through a portion of the plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your health. It usually uses less than one gallon of water.

(b) Do not cook with or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and then heat it.

(c) The steps described above will reduce the lead concentrations in your drinking water. However, if you are still concerned, you may wish to use bottled water for drinking and cooking.

(d) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(i) (Insert the name or title of facility official if appropriate) at (insert phone number) can provide you with information about your facility's water supply; and

(ii) The Medical Director of (Insert the name of the city or county Health Department), and the Virginia Department of Health, Division of Child and Adolescent Health, Lead Safe Virginia Program Director at 1-877-668-7987 can provide you with information about the health effects of lead.

2. Content of broadcast materials. ~~A waterworks~~ An owner shall include the following information in all public service announcements submitted under the lead public education program to television and radio stations for broadcasting:

a. Why should everyone want to know the facts about lead and drinking water? Because unhealthy amounts of lead can enter drinking water through the plumbing in your home. That's why I urge you to do what I did. I had my water tested for (insert free or $ per sample). You can contact the (insert the name of the waterworks) for information on testing and on simple ways to reduce your exposure to lead in drinking water.

b. To have your water tested for lead, or to get more information about this public health concern, please call (insert the phone number of the waterworks).

3. Delivery of a public education program.

a. In communities where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate language(s).

b. The owner of a community waterworks that exceeds the lead action level on the basis of tap water samples collected in accordance with 12VAC5-590-370 B 6 a, and that is not already repeating public education tasks pursuant to subdivisions F 3 c, F 3 g, or F 3 h of this section, shall, within 60 days:

(1) Insert notices in each customer's water utility bill containing the information in subdivision F 1 of this section, along with the following alert on the water bill itself in large print: "SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION." The owner of a community waterworks having a billing cycle that does not include a billing within 60 days of exceeding the action level, or that cannot insert information in the water utility bill without making major changes to its billing system, may use a separate mailing to deliver the information in subdivision F 1 a of this section as long as the information is delivered to each customer within 60 days of exceeding the action level. The owner of such waterworks shall also include the "alert" language specified in this paragraph.

(2) Submit the information in subdivision F 1 of this section to the editorial departments of the major daily and weekly newspapers circulated throughout the community.

(3) Deliver pamphlets and/or brochures that contain the public education materials in subdivisions F 1 b and d of this section to facilities and organizations, including the following:

(a) Public schools and/or local school boards;

(b) City or county health department;

(c) Women, Infants, and Children and/or Head Start Program(s) whenever available;

(d) Public and private hospitals and/or clinics;

(e) Pediatricians;

(f) Family planning clinics; and

(g) Local welfare agencies.

(4) Submit the public service announcement in subdivision F 2 of this section to at least five of the radio and television stations with the largest audiences that broadcast to the community served by the waterworks.

c. The owner of a community waterworks shall repeat the tasks contained in subdivisions F 3 b (1), (2), and (3) of this section every 12 months, and the tasks contained in subdivision F 3 b (4) of this section every six months for as long as the waterworks exceeds the lead action level.

d. Within 60 days after it exceeds the lead action level (unless it already is repeating public education tasks pursuant to subdivision F 3 e of this section), the owner of a nontransient noncommunity waterworks shall deliver the public education materials contained in subdivisions F 1 a or the public education materials specified by subdivision F 1 b of this section as follows:

(1) Post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the waterworks; and

(2) Distribute informational pamphlets and/or brochures on lead in drinking water to each person served by the nontransient noncommunity waterworks. The commissioner may allow the waterworks owner to utilize electronic transmission in lieu of or combined with printed materials as long as it achieves at least the same coverage.

e. The owner of a nontransient noncommunity waterworks shall repeat the tasks contained in subdivision F 3 d of this section at least once during each calendar year in which the waterworks exceeds the lead action level.

f. ~~A waterworks~~ An owner may discontinue delivery of public education materials if the waterworks has met the lead action level during the most recent six-month monitoring period conducted pursuant to 12VAC5-590-370 B 6 a. The owner shall recommence public education in accordance with this section if the waterworks subsequently exceeds the lead action level during any monitoring period.

g. The owner of a community waterworks may apply to the district engineer, in writing, (unless the commissioner has waived the requirement for prior approval) to use the text specified in subdivision F 1 b of this section in lieu of the text in subdivision F 1 a of this section and to perform the tasks listed in subdivisions F 3 d and F 3 e of this section in lieu of the tasks in subdivisions F 3 b and F 3 c of this section if:

(1) The waterworks serves a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices; and

(2) The ~~waterworks~~ owner provides water as part of the cost of services provided and does not separately charge for water consumption.

h. The owner of a community water system serving 3,300 or fewer people may omit the task contained in subdivision F 3 b (4) of this section. As long as the owner distributes notices containing the information contained in subdivision F 1 a of this section to every household served by the waterworks, such waterworks owners may further limit their public education programs as follows:

(1) Waterworks serving 500 or fewer people may forego the task contained in subdivision F 3 b (2) of this section. Such ~~a waterworks~~ an owner may limit the distribution of the public education materials required under subdivision F 3 b (3) of this section to facilities and organizations served by the waterworks that are most likely to be visited regularly by pregnant women and children, unless it is notified by the commissioner in writing that it must make a broader distribution.

(2) If approved by the commissioner in writing, the owner of a waterworks ~~owner~~ serving 501 to 3,300 people may omit the task in subdivision F 3 b (2) of this section and/or limit the distribution of the public education materials required under subdivision F 3 b (3) of this section to facilities and organizations served by the waterworks that are most likely to be visited regularly by pregnant women and children.

i. The owner of a community waterworks serving 3,300 or fewer people ~~that~~ who delivers public education in accordance with subdivision F 3 h of this section shall repeat the required public education tasks at least once during each calendar year in which the waterworks exceeds the lead action level.

4. Supplemental monitoring and notification of results. The owner of a waterworks that fails to meet the lead action level on the basis of tap samples collected in accordance with 12VAC5-590-370 B 6 a shall offer to sample the tap water of any customer who requests it. The owner is not required to pay for collecting or analyzing the sample, nor is the owner required to collect and analyze the sample itself.

G. Beginning January 1, 1993, each ~~waterworks~~ owner shall certify annually in writing to the commissioner (using third party or manufacturer's certification) that, when polymers containing acrylamide or epichlorohydrin are used by the waterworks in drinking water systems, the combination (or product) of dose and monomer level does not exceed the following specified levels: Acrylamide = 0.05% dosed at 1 ppm (or equivalent) of polymer. Epichlorohydrin = 0.01% dosed at 20 ppm (or equivalent) of polymer. Certifications may rely on manufacturers or third parties, as approved by the commissioner.

H. Treatment technique for control of disinfection byproduct (DBPP) precursors.

1. Applicability.

a. Waterworks that use surface water or groundwater under the direct influence of surface water using conventional filtration treatment ~~must~~ shall operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels specified in subdivision H 2 of this section unless the waterworks meets at least one of the alternative compliance criteria listed in subdivision H 1 b or c of this section.

b. Alternative compliance criteria for enhanced coagulation and enhanced softening waterworks. ~~Waterworks~~ Owners of waterworks that use surface water or groundwater under the direct influence of surface water provided with conventional filtration treatment may use the alternative compliance criteria in subdivisions H 1 b (1) through (6) of this section to comply with this section in lieu of complying with subdivision H 2 of this section. ~~Waterworks must~~ Owners shall still comply with monitoring requirements in 12VAC5-590-370 B 3 i.

(1) The waterworks' source water TOC level, measured according to 12VAC5-590-440, is less than 2.0 mg/L, calculated quarterly as a running annual average.

(2) The waterworks' treated water TOC level, measured according to 12VAC5-590-440, is less than 2.0 mg/L, calculated quarterly as a running annual average.

(3) The waterworks' source water TOC level, measured according to 12VAC5-590-440, is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity, measured according to 12VAC5-590-440, is greater than 60 mg/L (as $CaCO_3$), calculated quarterly as a running annual average; and either the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or prior to the effective date for compliance in 12VAC590-370 B 3 a, the ~~waterworks~~ owner has made a clear and irrevocable financial commitment not later than the effective date for compliance in 12VAC590-370 B 3 a to use of technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. ~~Waterworks must~~ Owners shall submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the commissioner for approval not later than the effective date for compliance in 12VAC590-370 B 3 a. These technologies ~~must~~ shall be installed and operating not

later than June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule will constitute a violation of these regulations.

(4) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the waterworks uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(5) The waterworks' source water SUVA, prior to any treatment and measured monthly according to 12VAC5-590-440, is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(6) The waterworks' finished water SUVA, measured monthly according to 12VAC5-590-440, is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

c. Additional alternative compliance criteria for softening waterworks. Waterworks practicing enhanced softening that cannot achieve the TOC removals required by subdivision H 2 b of this section may use the alternative compliance criteria in subdivisions H 1 c (1) and (2) of this section in lieu of complying with subdivision H 2 of this section. ~~Waterworks must~~ Owners shall still comply with monitoring requirements in 12VAC5-590-370 B 3 i.

(1) Softening that results in lowering the treated water alkalinity to less than 60 mg/L (as $CaCO_3$), measured monthly according to 12VAC5-590-440 and calculated quarterly as a running annual average.

(2) Softening that results in removing at least 10 mg/L of magnesium hardness (as $CaCO_3$), measured monthly according to 12VAC5-590-440 and calculated quarterly as ~~an~~ a running annual ~~running~~ average.

2. Enhanced coagulation and enhanced softening performance requirements.

a. Waterworks ~~must~~ shall achieve the percent reduction of TOC specified in subdivision H 2 b of this section between the source water and the combined filter effluent, unless the commissioner approves a waterworks' request for alternate minimum TOC removal (Step 2) requirements under subdivision H 2 c of this section.

b. Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in accordance with 12VAC5-590-440. Waterworks practicing softening are required to meet the Step 1 TOC reductions in the far-right column (Source water alkalinity greater than 120 mg/L) for the specified source water TOC:

Step 1 Required Removal of TOC by Enhanced Coagulation and Enhanced Softening for Community or Nontransient Noncommunity Waterworks That Use Surface Water or Groundwater Under the Direct Influence of Surface Water Using Conventional Treatment [1, 2]

Source-water TOC mg/L	Source-water alkalinity, mg/L as $CaCO_3$		
	0-60	~~> 60-120~~ greater than 60-120	~~>120~~[3] greater than 120[3]
~~>2.0-4.0~~ greater than 2.0 - 4.0	35.0%	25.0%	15.0%
~~>4.0-8.0~~ greater than 4.0 - 8.0	45.0%	35.0%	25.0%
~~>8.0~~ greater than 8.0	50.0%	40.0%	30.0%

[1] Waterworks meeting at least one of the conditions in subdivisions H 1 b (1) through (6) of this section are not required to operate with enhanced coagulation.

[2] Softening waterworks meeting one of the alternative compliance criteria in subdivision H 1 c of this section are not required to operate with enhanced softening.

[3] Waterworks practicing softening ~~must~~ shall meet the TOC removal requirements in this column.

c. Waterworks that use surface water or groundwater under the direct influence of surface water with conventional treatment systems that cannot achieve the Step 1 TOC removals required by subdivision H 2 b of this section due to water quality parameters or operational constraints ~~must~~ shall apply to the commissioner, within three months of failure to achieve the TOC removals required by subdivision H 2 b of this section, for approval of alternative minimum TOC (Step 2) removal requirements submitted by the waterworks. If the commissioner approves the alternative minimum TOC removal (Step 2) requirements, the commissioner may make those requirements retroactive for the purposes of determining compliance. Until the commissioner approves the alternate minimum TOC removal (Step 2) requirements, the ~~waterworks must~~ owner shall meet the Step 1 TOC removals contained in subdivision H 2 b of this section.

d. Alternate minimum TOC removal (Step 2) requirements. Applications, made to the commissioner by waterworks using enhanced coagulation, for approval of alternative minimum TOC removal (Step 2) requirements under subdivision H 2 c of this section ~~must~~ shall

include, at a minimum, results of bench- or pilot-scale testing conducted under subdivision H 2 d (1) of this section. The submitted bench- or pilot-scale testing ~~must~~ shall be used to determine the alternate enhanced coagulation level.

(1) Alternate enhanced coagulation level is defined as coagulation at a coagulant dose and pH as determined by the method described in subdivisions H 2 d (1) through (5) of this section such that an incremental addition of 10 mg/L of alum (or equivalent amount of ferric salt) results in a TOC removal of equal to or less than 0.3 mg/L. The percent removal of TOC at this point on the "TOC removal versus coagulant dose" curve is then defined as the minimum TOC removal required for the waterworks. Once approved by the commissioner, this minimum requirement supersedes the minimum TOC removal required by the table in subdivision H 2 b of this section. This requirement will be effective until such time as the commissioner approves a new value based on the results of a new bench- and pilot-scale test. Failure to achieve the alternative minimum TOC removal levels set by the commissioner is a violation of these regulations.

(2) Bench- or pilot-scale testing of enhanced coagulation ~~must~~ shall be conducted by using representative water samples and adding 10 mg/L increments of alum (or equivalent amounts of ferric salt) until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in the following table:

Enhanced Coagulation Step 2 Target pH

Alkalinity (mg/L as $CaCO_3$)	Target pH
0-60	5.5
~~>~~greater than 60-120	6.3
~~>~~greater than 120-240	7.0
~~>~~greater than 240	7.5

(3) For waters with alkalinities of less than 60 mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below 5.5 before significant TOC removal occurs, the ~~waterworks must~~ owner shall add necessary chemicals to maintain the pH between 5.3 and 5.7 in samples until the TOC removal of 0.3 mg/L per 10 mg/L alum added (or equivalent addition of iron coagulant) is reached.

(4) The ~~waterworks~~ owner may operate at any coagulant dose or pH necessary (consistent with other sections of these regulations) to achieve the minimum TOC percent removal approved under subdivision H 2 c of this section.

(5) If the TOC removal is consistently less than 0.3 mg/L of TOC per 10 mg/L of incremental alum dose at all dosages of alum (or equivalent addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The waterworks may then apply to the commissioner for a waiver of enhanced coagulation requirements.

3. Compliance calculations.

a. ~~Waterworks~~ Owners of waterworks that use surface water or groundwater under the direct influence of surface water other than those identified in subdivision H 1 b or H 1 c of this section ~~must~~ shall comply with requirements contained in subdivision H 2 b or H 2 c of this section. ~~Waterworks must~~ Owners shall calculate compliance quarterly, beginning after the waterworks has collected 12 months of data, by determining an annual average using the following method:

(1) Determine actual monthly TOC percent removal, equal to:

(1-(treated water TOC/source water TOC))X100

(2) Determine the required monthly TOC percent removal (from either the table in subdivision H 2 b of this section or from subdivision H 2 c of this section).

(3) Divide the value in subdivision H 3 a (1) of this section by the value in subdivision H 3 a (2) of this section.

(4) Add together the results of subdivision H 3 a (3) of this section for the last 12 months and divide by 12.

(5) If the value calculated in subdivision H 3 a (4) of this section is less than 1.00, the waterworks is not in compliance with the TOC percent removal requirements.

b. ~~Waterworks~~ Owners may use the provisions in subdivisions H 3 b (1) through (5) of this section in lieu of the calculations in subdivisions H 3 a (1) through (5) of this section to determine compliance with TOC percent removal requirements.

(1) In any month that the waterworks' treated or source water TOC level, measured according to 12VAC5-590-440, is less than 2.0 mg/L, the ~~waterworks~~ owner may assign a monthly value of 1.0 (in lieu of the value calculated in subdivision H 3 a (3) of this section) when calculating compliance under the provisions of subdivision H 3 a of this section.

(2) In any month that a waterworks practicing softening removes at least 10 mg/L of magnesium hardness (as $CaCO_3$), the waterworks may assign a monthly value of 1.0 (in lieu of the value calculated in subdivision H 3 a (3) of this section) when calculating compliance under the provisions of subdivision H 3 a of this section.

(3) In any month that the waterworks' source water SUVA, prior to any treatment and measured according to

12VAC5-590-440, is equal to or less than 2.0 L/mg-m, the ~~waterworks~~ owner may assign a monthly value of 1.0 (in lieu of the value calculated in subdivision H 3 a (3) of this section) when calculating compliance under the provisions of subdivision H 3 a of this section.

(4) In any month that the waterworks' finished water SUVA, measured according to 12VAC5-590-440, is equal to or less than 2.0 L/mg-m, the ~~waterworks~~ owner may assign a monthly value of 1.0 (in lieu of the value calculated in subdivision H 3 a (3) of this section) when calculating compliance under the provisions of subdivision H 3 a of this section.

(5) In any month that a waterworks practicing enhanced softening lowers alkalinity below 60 mg/L (as $CaCO_3$), the ~~waterworks~~ owner may assign a monthly value of 1.0 (in lieu of the value calculated in subdivision H 3 a (3) of this section) when calculating compliance under the provisions of subdivision H 3 a of this section.

c. Waterworks that use surface water or groundwater under the direct influence of surface water and using conventional treatment may also comply with the requirements of this section by meeting the criteria in subdivision H 1 b or c of this section.

4. Enhanced coagulation or enhanced softening is the treatment technique required to control the level of DBP precursors in drinking water treatment and distribution systems for waterworks using surface water or groundwater under the direct influence of surface water and using conventional treatment.

I. The best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for disinfection byproducts show in Table 2.13 are listed below:

~~1. Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant is the best available technology for achieving compliance with the maximum contaminant level for TTHM or HAA5.~~

~~2. Control of ozone treatment process to reduce production of bromate is the best available technology for achieving compliance with the maximum contaminant level for bromate.~~

~~3. Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels is the best available technology for achieving compliance with the maximum contaminant level for chlorite.~~

1. The best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for bromate and chlorite:

Disinfection byproduct	Best available technology
Bromate	Control of ozone treatment process to reduce production of bromate.
Chlorite	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels

2. The best technology, treatment techniques, or other means available for achieving compliance with the running annual average maximum contaminant levels for TTHM and HAA5:

Disinfection byproduct	Best available technology
Total trihalomethanes (TTHM) and Haloacetic acids (five) (HAA5)	Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant

3. The best technology, treatment techniques, or other means available for achieving compliance with the locational running annual average maximum contaminant levels for TTHM and HAA5 for all systems that disinfect their source water:

Disinfection byproduct	Best available technology
Total trihalomethanes (TTHM) and Haloacetic acids (five) (HAA5)	Enhanced coagulation or enhanced softening, plus GAC10; or nanofiltration with a molecular weight cutoff less than or equal to 1000 Daltons; or GAC20

4. The best technology, treatment techniques, or other means available for achieving compliance with the locational running annual average maximum contaminant levels for TTHM and HAA5 for consecutive systems and applies only to the disinfected water that consecutive systems buy or otherwise receive:

Disinfection byproduct	Best available technology
Total trihalomethanes (TTHM) and Haloacetic acids (five) (HAA5)	Systems serving equal to or greater than 10,000: Improved distribution system and storage tank management to reduce residence time, plus the use of chloramines for disinfectant residual maintenance Systems serving less than 10,000: Improved distribution system and storage tank management to reduce residence time

J. The best technology, treatment techniques, or other means available for achieving compliance with the maximum residual disinfectant levels identified in Table 2.12 is the control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

K. If spent filter backwash water, thickener supernatant, or liquids from dewatering processes are recycled, in any waterworks supplied by a surface water source and waterworks supplied by a groundwater source under the direct influence of surface water that employ conventional filtration or direct filtration treatment, then they are subject to the recycle treatment technique requirement. Under this requirement recycle flows ~~must~~ shall be returned through all the processes of the treatment system, or an alternative location approved by the state, by June 8, 2004.

L. Waterworks with uncovered finished water storage facilities shall comply with the requirements to cover the facility or treat the discharge from the facility as described in this paragraph.

1. Waterworks using uncovered finished water storage facilities shall comply with the conditions of this section.

2. Owners shall notify the commissioner of the use of each uncovered finished water storage facility no later than April 1, 2008.

3. Owners shall meet the conditions of subdivision L 3 a or b of this section for each uncovered finished water storage facility or be in compliance with a State-approved schedule to meet these conditions no later than April 1, 2009.

a. All uncovered finished water storage facilities shall be covered.

b. Waterworks shall treat the discharge from the uncovered finished water storage facility to the distribution system to achieve inactivation and/or removal of at least 4-log virus, 3-log Giardia lamblia, and 2-log Cryptosporidium using a protocol approved by the commissioner.

4. Failure to comply with the requirements of this section is a violation of the treatment technique requirement.

12VAC5-590-440. Analytical methods.

Analytical methods to determine compliance with the requirements of this chapter shall be those specified in the applicable edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation; "Methods for Chemical Analysis of Water and Wastes," Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974; and "Methods for the Determination of Organic Compounds in Finished Drinking Water and Raw Source Water" (Sept 1986), EPA, Environmental Monitoring and Support Laboratory, Cincinnati, OH 45268 or in the case of primary maximum contaminant levels and lead and copper action levels, those methods shall be followed by the Division of Consolidated Laboratory Services and consistent with current U.S. Environmental Protection Agency regulations found at 40 CFR Part 141. All laboratories seeking certification to perform drinking water analyses ~~must~~ shall comply with all appropriate regulations promulgated by the Department of General Services, Division of Consolidated Laboratory Services.

Table 2.2 — Inorganic Chemicals.

Substance	Primary Maximum Contaminant Level (mg/L)
Antimony	0.006
Arsenic (As)	0.010***
Asbestos	7 Million Fibers/Liter (longer than 10 um)
Barium (Ba)	2
Beryllium	0.004
~~Cadium~~ Cadmium (Cd)	0.005
Chromium (Cr)	0.1
Cyanide (as free Cyanide)	0.2
Fluoride (F)	4.0 #
Mercury (Hg)	0.002
Nickel	0.1
Nitrate (as N)	10 **
Nitrite (as N)	1
Total Nitrate and Nitrite (as N)	10
Selenium (Se)	0.05
Thallium	0.002
Substance	Secondary Maximum Contaminant Level (mg/L)
Chloride (Cl)	250.0
Corrosivity	~~Noncorrosive~~ Noncorrosive, See Appendix B
Fluoride	2.0
Foaming Agents	0.5 *

Iron (Fe)	0.3
Manganese (Mn)	0.05
Sodium (Na)	No Limits Designated
Sulfate (SO_4)	250.0
Zinc (Zn)	5.0
Substance	Action Level (mg/L)
Lead (Pb)	0.015
Copper (Cu)	1.3

Note. For artificially fluoridated waterworks the minimum concentration of fluoride should be 0.8 mg/L and the maximum should be 1.0 mg/L. The optimum control limit is 0.9 mg/L. (See Appendix B)

* Note. Concentration reported in terms of Methylene Blue Active Substances.

** Note. See Appendix B for Exception Regarding Noncommunity Waterworks.

*** Note. The PMCL for arsenic is 0.010 mg/L for community and nontransient noncommunity waterworks effective January 23, 2006. Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

Table 2.3 — Organic Chemicals.

Substance	Primary Maximum Contaminant Levels (mg/L)
VOC	
1. Vinyl Chloride	0.002
2. Benzene	0.005
3. Carbon Tetrachloride	0.005
4. 1,2-Dichloroethane	0.005
5. Trichloroethylene (TCE)	0.005
6. 1,1-Dichloroethylene	0.007
7. 1,1,1-Trichloroethane	0.2
8. para-Dichlorobenzene	0.075
9. cis-1,2-Dichloroethylene	0.07
10. 1,2-Dichloropropane	0.005
11. Ethylbenzene	0.7
12. Monochlorobenzene	0.1
13. o-Dichlorobenznen	0.6
14. Styrene	0.1
15. Tetrachloroethylene	0.005
16. Toluene	1
17. trans-1,2-Dichloroethylene	0.1
18. Xylene (total)	10
19. Dichloromethane	0.005
20. 1,2,4-Trichlorobenzene	0.07
21. 1,1,2-Trichloroethane	0.05
SOC	
1. Alachlor	0.002
2. Atrazine	0.003
3. Carbofuran	0.04
4. Chlordane	0.002
5. Heptachlor	0.0004
6. Heptachlor epoxide	0.0002
7. Polychlorinated biphenyls (PCBs)	0.0005
8. Dibromochloropropane (DBCP)	0.0002
9. Ethylene dibromide (EDB)	0.00005
10. Lindane	0.0002
11. Methoxychlor	0.04
12. Toxaphene	0.003
13.,4-Dichlorophenoxyacetic Acid (2,4-D)	0.07
14. 2,4,5-Trichlorophenoxypropionic Acid (2,4,5-TP or Silvex)	0.05
15. Reserved	
16. Reserved	
17. Reserved	
18. Pentachlorophenol	0.001
19. Benzo(a)pyrene	0.0002
20. Dalapon	0.2
21. Di(2-ethylhexy)adipate	0.4
22. Di(2-ethylhexy)phthalate	0.006
23. Dinoseb	0.007
24. Diquat	0.02

25. Endothall	0.1
26. Endrin	0.002
27. Glyphosate	0.7
28. Hexachlorobenzene	0.001
29. Hexachlorocyclopentadiene	0.05
30. Oxamyl (Vydate)	0.2
31. Picloram	0.5
32. Simazine	0.004
33. 2,3,7,8-TCDD (Dioxin)	3 X 10^{-8}

Table 2.4 — Physical Quality.

Parameter	Maximum Contaminant Level	Concentration
Color	Secondary	15 Color Units
Odor	Secondary	3 Threshold odor numbers
pH	Secondary	6.5-8.5
Total Dissolved	Secondary	500 mg/L Solids (TDS)
Turbidity	Primary	*1 Turbidity Unit

* See Appendix B for operational requirements.

Table 2.5 — Radiological Quality.

A. Maximum Contaminant Level Goals for Radionuclides	
SUBSTANCE	MCLG
1. Combined radium-226 and radium-228.	~~zero~~ Zero
2. Gross alpha particle activity (excluding Radon and uranium)	~~zero~~ Zero
3. Beta particle and photon radioactivity.	~~zero~~ Zero
4. Uranium	~~zero~~ Zero

B. Primary Maximum Contaminant Levels for Radionuclides	
SUBSTANCE	Primary Maximum Contaminant Level
1. Combined radium-226 and radium-228	5 pCi/L
2. Gross Alpha Activity (excluding Radon and Uranium)	15 pCi/L
3. Uranium	30 µg/L

Primary Maximum Contaminant Levels for Beta Particle and Photon Radioactivity from Man-Made Radionuclides
1. The average annual concentration of Beta particle and Photon radioactivity from man-made radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.
2. Except for the radionuclides listed in Schedule I, the concentration of man-made radionuclides causing 4 MREM total body or organ dose equivalents shall be calculated on the basis of a 2 liter per day drinking water intake using the 168-hour data listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and Water for Occupational Exposure,' MBS Handbook 69 as amended August 1963, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ exceed 4 millirem/year.

Schedule 1

Average annual concentrations assumed to produce a total body organ dose of 4 mrem/year.

Radionuclide	Critical Organ	pCi/liter
Tritium	Total Body	20,000
Strontium-90	Bone Marrow	8

* See Appendix B.

Table 2.6 — Unregulated Contaminant Organics to be Monitored.

Group A	
1. Chloroform	12. Chloromethane
2. Bromodichloromethane	13. Bromoethane
3. Chlorodibromomethane	14. 1,2,3-Trichloropropane
4. Bromoform	15. 1,1,1,2-Tetrachloroethane

5. Chlorobenzene	16. Chloroethane
6. m-Dichlorobenzene	17. 2,2-Dichloropropane
7. Dibromomethane	18. o-Chlorotoluene
8. 1,1-Dichloropropene	19. p-Chlorotoluene
9. 1,1-Dichloroethane	20. Bromobenzene
10. 1,1,2,2-Tetrachloroethane	21. 1,3-Dichloropropene
11. 1,3-Dichloropropane	
Group B	
1. Aldrin	8. Metoachlor
2. Butachlor	9. Metribuzin
3. Carbaryl	10. Propachlor
4. Dicamba	11. Aldicarb
5. Dieldrin	12. Aldicarb sulfone
6. Methomyl	13. Aldicarb sulfoxide
7. 3-Hyposycarbofuran	

Table 2.7 — ~~Organic Chemical Monitoring Implementation Schedule Inorganics to be Monitored.~~ Reserved

~~Sulfate~~

Table 2.8 — Organic Chemical Monitoring Implementation Schedule.

Number of Persons Served	Monitoring to Begin During the Quarter that Begins
~~over~~ Over 10,000	January 1,1988
3,300 to 10,000	January 1,1989
less than 3,300	January 1,1991

Table 2.9 — PMCL Effective Dates.

Table 2.3, Organics Chemicals, VOC 1 through 8 (Phase I)	January 9, 1989
Total Trihalomethanes and Fluoride	July 1, 1991
Table 2.3, Organics Chemicals, VOC 9 through 18 and SOC 1 through 14 (Phase II VOCs and SOCs)	July 30, 1992
Asbestos, Cadmium, Chromium, Mercury, Nitrate, Nitrite, Total Nitrate+Nitrite, Selenium (Phase II IOCs)	July 30, 1992
Table 2.3, Organics Chemicals, SOC 15 through 18 and Table 2.2, Inorganic Chemicals, Barium (Phase II SOCs and IOCs)	January 1, 1993
Table 2.3, Organics Chemicals, VOC 19 through 21, SOC 19 through 33 and Table 2.2, Inorganic Chemicals; antimony, beryllium, cyanide (as free cyanide), nickel, and thallium	January 17, 1994
Uranium	December 8, 2003

Table 2.10 — Maximum Contaminant Level Goals for Microbiological Contaminants.

Contaminant	MCLG
Giardia lamblia	~~zero~~ Zero
Viruses	~~zero~~ Zero
Legionella	~~zero~~ Zero
Total coliforms (including fecal coliforms and Escherichia coli)	~~zero~~Zero
Cryptosporidium	~~zero~~ Zero

Table 2.11 — Maximum Contaminant Level Goals for Disinfection Byproducts.

Disinfection byproduct	MCLG (mg/L)
~~Chloroform~~ Bromate	~~zero~~ Zero
Bromodichloromethane	~~zero~~ Zero
Bromoform	~~zero~~ Zero
~~Bromate~~ Chlorite	~~zero~~ 0.8
~~Dichloroacetic acid~~ Chloroform	~~zero~~ Zero
~~Trichloroacetic acid~~ Dibromochloromethane	~~0.3~~ 0.06
~~Chlorite~~ Dichloroacetic acid	~~0.8~~ Zero
Monochloroacetic acid	0.07
~~Dibromochloromethane~~ Trichloroacetic acid	~~0.06~~ 0.02

Table 2.12 — Maximum Residual Disinfectant Level Goals (MRDLG) and Maximum Residual Disinfectant Levels (MRDL) for Disinfectants

Disinfectant residual	MRDLG(mg/L)	MRDL (mg/L)
Chlorine	4 (as Cl_2)	4.0 (as Cl_2)
Chloramines	4 (as Cl_2)	4.0 (as Cl_2)
Chlorine dioxide	0.8 (as ClO_2)	0.8 (as ClO_2)

Notwithstanding the MRDLs in Table 2.12, ~~waterworks~~ owners may increase residual disinfectant levels in the distribution system of chlorine or chloramines (but not chlorine dioxide) to a level and for a time necessary to protect public health, to address specific microbiological contamination problems caused by circumstances such as, but not limited to, distribution line breaks, storm run-off events, source water contamination events, or cross-connection events.

Table 2.13 — Primary Maximum Contaminant Levels (PMCL) for Disinfection Byproducts

Disinfection byproduct	~~Current PMCL[1] (mg/L)~~	~~Future~~ PMCL~~2~~ (mg/L)
Total trihalomethanes (TTHM)	~~0.10~~	0.080
Haloacetic ~~acids~~ Acids (five) (HAA5)		0.060
Bromate		0.010
Chlorite		1.0

~~[1] The primary maximum contaminant level (PMCL) of 0.10 mg/L for total trihalomethanes (the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform)) applies to community waterworks using surface water or groundwater under the direct influence of surface water that serve a population of 10,000 people or more until December 31, 2001. This level applies to community waterworks that use only groundwater not under the direct influence of surface water and that serve a population of 10,000 people or more until December 31, 2003. Compliance with the primary maximum contaminant level for total trihalomethanes is calculated pursuant to 12VAC5-590-370 C 2 b (2) (a) (i). After December 31, 2003, this PMCL is no longer applicable.~~

~~[2] Community or nontransient noncommunity waterworks that use surface water or groundwater under the direct influence of surface water and serving 10,000 or more persons, must comply with this PMCL beginning January 1, 2002. Community or nontransient noncommunity waterworks that use surface water or groundwater under the direct influence of surface water serving fewer than 10,000 persons and waterworks using only groundwater not under the direct influence of surface water must comply with this PMCL beginning January 1, 2004.~~

12VAC5-590-500. Disinfection by chlorination.

A. All water supplies derived from surface water sources in whole or in part shall be disinfected in accordance with 12VAC5-590-1000 until June 29, 1993. It is recommended that a chlorine residual be maintained. Beginning June 29, 1993, every owner of a waterworks shall comply with the disinfection requirements of 12VAC5-590-420.

B. ~~Waterworks~~ Owners of waterworks utilizing surface waters as a water supply shall practice prechlorination. The requirement for prechlorination may be waived by the division when warranted.

C. ~~Waterworks~~ Owners of waterworks utilizing groundwater as a water supply that has been determined by the division to be under the direct influence of surface water, as provided in 12VAC5-590-430, will be required to disinfect. If the ~~division~~ commissioner determines that the groundwater supply is surface influenced, the ~~waterworks~~ owner shall provide disinfection during the interim before filtration is installed in accordance with 12VAC5-590-420 B 2 f. If filtration is installed prior to June 29, 1993, the owner shall comply with the disinfection requirements of 12VAC5-590-1000 until June 29, 1993. By June 29, 1993, all ~~waterworks~~ owners of waterworks using a groundwater source determined to be under the direct influence of surface water ~~must~~ shall comply with the disinfection requirements of 12VAC5-590-420.

D. ~~Any~~ The owner of any waterworks utilizing groundwater as a water supply that is not governed by 12VAC5-590-500 will be required to disinfect in accordance with 12VAC5-590-1000 if a sanitary survey reveals a potential source of contamination or if the water fails to meet the bacteriological quality standards set forth in Article 1 (12VAC5-590-340 et seq.) of Part II of this chapter.

E. Disinfection profile data and disinfection benchmark data.

1. ~~Any~~ The owner of any waterworks that has disinfection profile data ~~must~~ shall retain this data in graphic form, as a spreadsheet, or in some other format acceptable to the commissioner for review as part of sanitary surveys conducted by the commissioner. Appendix L lists the procedure for developing a disinfection profile.

2. Disinfection benchmarking.

a. ~~Any~~ The owner of any waterworks that has developed a disinfection profile and that decides to make a significant change to its disinfection practice ~~must~~ shall

consult with the commissioner prior to making such change. Significant changes to disinfection practice are:

(1) Changes to the point of disinfection;

(2) Changes to the disinfectants used in the treatment plant;

(3) Changes to the disinfection process; and

(4) Any other modification identified by the commissioner.

b. ~~Any~~ The owner of any waterworks that is modifying its disinfection practice ~~must~~ shall calculate its disinfection benchmark using the following procedure:

(1) For each year of profiling data collected, the ~~waterworks must~~ owner shall determine the lowest average monthly *Giardia lamblia* inactivation in each year of profiling data. The ~~waterworks must~~ owner shall determine the average *Giardia lamblia* inactivation for each calendar month for each year of profiling data by dividing the sum of daily (or weekly) *Giardia lamblia* inactivation by the number of values calculated for that month.

(2) The disinfection benchmark is the lowest monthly average value (for waterworks with one year of profiling data) or average of lowest monthly average values (for waterworks with more than one year of profiling data) of the monthly logs of *Giardia lamblia* inactivation in each year of profiling data.

(3) ~~A~~ The owner of a waterworks that uses either chloramines or ozone for primary disinfection ~~must~~ shall also calculate the disinfection benchmark for viruses using a method approved by the commissioner.

c. The ~~waterworks must~~ owner shall submit the following information to the commissioner as part of the waterworks' consultation process.

(1) A description of the proposed change;

(2) The disinfection profile for *Giardia lamblia* (and, if necessary, viruses) and benchmark listed in subdivision E 2 b of this section;

(3) An analysis of how the proposed change will affect the current levels of disinfection; and

(4) Any additional information to justify the change.

12VAC5-590-530. Reporting.

A. The results of any required monitoring activity shall be reported by the ~~waterworks~~ owner (or their authorized agent) to the ~~appropriate field office~~ ODW no later than the 10th day of the month following the month during which the tests were taken. The results of any required monitoring activity shall be reported by the owner in a format prescribed by the commissioner.

1. ~~Waterworks~~ Owners of waterworks required to sample quarterly ~~must~~ shall report to the ~~appropriate field office~~ ODW within 10 days after the end of each quarter in which samples were collected.

2. ~~Waterworks~~ Owners of waterworks required to sample less frequently than quarterly ~~must~~ shall report to the ~~appropriate field office~~ district engineer within 10 days after the end of each monitoring period in which samples were collected.

B. It shall be the duty and responsibility of an owner to report to the ~~appropriate field office~~ ODW in the most expeditious manner (usually by telephone) under the following circumstances. If it is done by telephone a confirming report shall be mailed as soon as practical.

1. When a bacteriological examination shows a repeat sample is required (see 12VAC5-590-380 D), a report shall be made within 48 hours. ~~A waterworks owner must~~ An owner shall report a total coliform PMCL violation to the ~~appropriate field office~~ district engineer no later than the end of the next business day.

2. When the daily average of turbidity testing exceeds 5 NTU a report shall be made within 48 hours.

3. When a ~~Primary Maximum Contaminant Level~~ PMCL of an inorganic or organic chemical is exceeded for a single sample the owner shall report same within seven days. If any one sample result would cause the compliance average to be exceeded the owner shall report same in 48 hours.

4. When the average value of samples collected pursuant to 12VAC5-590-410 exceeds the ~~Primary Maximum Contaminant Level~~ PMCL of any organic or inorganic chemical the owner shall report same within 48 hours.

5. When the maximum contaminant level for radionuclides has been exceeded as determined by Table 2.5 the results shall be reported within 48 hours.

6. The ~~waterworks~~ owner shall report to the ~~appropriate field office~~ district engineer within 48 hours the failure to comply with the monitoring and sanitary survey requirements of this chapter.

7. The ~~waterworks~~ owner shall report to the ~~appropriate field office~~ district engineer within 48 hours the failure to comply with the requirements of any schedule prescribed pursuant to a variance or exemption.

8. The ~~waterworks~~ owner shall report a Tier 1 violation or situation, as described in 12VAC5-590-540 A 1, to the ~~appropriate field office~~ district engineer as soon as practical, but no later than 24 hours after the ~~waterworks~~ owner learns of the Tier 1 violation or situation. At the same time the report is made, the owner shall consult with

the field office to determine the need for any additional actions to address the violation or situation.

9. The ~~waterworks~~ owner shall report a violation of treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit, as described in 12VAC5-590-420 B 2 a (2), B 2 a (3) (b), B 2 b (2), B 2 c (2), and B 2 d, to the ~~appropriate field office~~ district engineer as soon as practical, but no later than 24 hours after the ~~waterworks~~ owner learns of the violation. At the same time the report is made, the owner shall consult with the field office to determine the need for any additional actions to address the violation or situation.

C. Reporting requirements for filtration treatment and disinfection treatment.

1. The owner of a waterworks that provides filtration treatment shall report monthly to the ~~division~~ commissioner the following specified information beginning June 29, 1993, or when filtration is installed, whichever is later.

a. Turbidity measurements as required by 12VAC5-590-370 B 7 a shall be reported within 10 days after the end of each month the waterworks serves water to the public. Information that shall be reported includes:

(1) The total number of filtered water turbidity measurements taken during the month.

(2) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in 12VAC5-590-420 B 2 for the filtration technology being used.

(3) The date and value of any turbidity measurements taken during the month which exceed 5 NTU.

b. ~~A waterworks~~ The owner of a waterworks using surface water or groundwater under the direct influence of surface water that provides conventional filtration treatment or direct filtration ~~must~~ shall report monthly to the commissioner the information specified in subdivisions C 1 a (1) and (2) of this section ~~beginning January 1, 2002, for waterworks serving at least 10,000 people or January 1, 2005, for waterworks serving less than 10,000 people~~. Also, the owner of a waterworks that provides filtration approved under 12VAC5-590-420 B 2 d ~~must~~ shall report monthly to the commissioner the information specified in subdivision C 1 a (1) of this section ~~beginning January 1, 2002, for waterworks serving at least 10,000 people or January 1, 2005, for waterworks serving less than 10,000 people~~.

(1) Turbidity measurements as required by 12VAC5-590-420 B 2 a (3) ~~must~~ shall be reported within 10 days after the end of each month the system serves water to the public. Information that ~~must~~ shall be reported includes:

(a) The total number of filtered water turbidity measurements taken during the month.

(b) The number and percentage of filtered water turbidity measurements taken during the month that are less than or equal to the turbidity limits specified in 12VAC5-590-420 B 2 a (3) or 12VAC5-590-420 B 2 d.

(c) The date and value of any turbidity measurements taken during the month that exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or that exceed the maximum level set by the commissioner under 12VAC590-420 B 2 d.

(2) ~~Waterworks must~~ The owner shall maintain the results of individual filter monitoring taken under 12VAC5-590-370 B 7 b (1) for at least three years. ~~Waterworks must~~ The owner shall report that ~~they have~~ he has conducted individual filter turbidity monitoring under 12VAC5-590-370 B 7 b (1) within 10 days after the end of each month the waterworks ~~system~~ serves water to the public. ~~Waterworks must~~ Owners shall report individual filter turbidity measurement results taken under 12VAC5-590-370 B 7 b (1) within 10 days after the end of each month the waterworks serves water to the public only if measurements demonstrate one or more of the conditions in subdivisions C 1 b (2) (a) or (b) of this section. ~~Waterworks~~ The owners of waterworks that use lime softening may apply to the commissioner for alternative exceedance levels for the levels specified in subdivisions C 1 b (2) (a) or (b) of this section if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(a) For waterworks serving 10,000 or more people:

(i) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the ~~waterworks must~~ owner shall report the filter number, the turbidity measurement, and the date, or dates, on which the exceedance occurred. In addition, the ~~waterworks must~~ owner shall either produce a filter profile for the filter within seven days of the exceedance (if the ~~waterworks~~ owner is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(ii) For any individual filter that has a measured turbidity level of greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first four hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the ~~waterworks must~~ owner shall report the filter number, the turbidity, and the date, or dates, on which the exceedance occurred. In addition, the ~~waterworks must~~ owner shall

either produce a filter profile for the filter within seven days of the exceedance (if the ~~waterworks~~ owner is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(iii) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of three consecutive months, the ~~waterworks must~~ owner shall report the filter number, the turbidity measurement, and the date, or dates, on which the exceedance occurred. In addition, the ~~waterworks must~~ owner shall conduct a self-assessment of the filter within 14 days of the exceedance and report that the self-assessment was conducted. The self-assessment ~~must~~ shall consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

(iv) For any individual filter that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of two consecutive months, the ~~waterworks must~~ owner shall report the filter number, the turbidity measurement, and the date, or dates, on which the exceedance occurred. In addition, the ~~waterworks must~~ owner shall arrange for the conduct of a comprehensive performance evaluation by the commissioner or a third party approved by the commissioner no later than 30 days following the exceedance and have the evaluation completed and submitted to the commissioner no later than 90 days following the exceedance.

(b) For waterworks serving less than 10,000 people:

(i) For any individual filter (or the turbidity of combined filter effluent for systems with two filters that monitor combined filter effluent in lieu of individual filters) that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the ~~waterworks must~~ owner shall report the filter number(s), the turbidity measurement(s), and the date, or dates, on which the exceedance occurred and the cause (if known) for the exceedance(s).

(ii) For any individual filter (or the turbidity of combined filter effluent for systems with two filters that monitor combined filter effluent in lieu of individual filters) that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of three consecutive months, the ~~waterworks must~~ owner shall conduct a self-assessment of the filter(s) within 14 days of the day the filter exceeded 1.0 NTU unless a comprehensive performance evaluation as specified in paragraph (iii) of this section was required. ~~Waterworks~~ Owners of waterworks with two filters that monitor the combined filter effluent in lieu of individual filters ~~must~~ shall conduct a self assessment on both filters. The self-assessment ~~must~~ shall be reported to the commissioner and consist of at least the following components: date self-assessment was triggered~~,~~; date the self-assessment was completed~~,~~; assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report. The self assessment ~~must~~ shall be submitted within 10 days after the end of the month or 14 days after the self assessment was triggered only if it was triggered during the last four days of the month.

(iii) For any individual filter (or the turbidity of combined filter effluent for systems with two filters that monitor combined filter effluent in lieu of individual filters) that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of two consecutive months, the ~~waterworks must~~ owner shall arrange for a comprehensive performance evaluation by the commissioner or a third party approved by the commissioner no later than 60 days following the day the filter exceeded 2.0 NTU in two consecutive months. The ~~waterworks must~~ owner shall report within 10 days after the end of the month that a comprehensive performance evaluation is required and the date that it was triggered. If a comprehensive performance evaluation has been completed by the commissioner or a third party approved by the commissioner within the 12 prior months or the ~~waterworks~~ owner and the commissioner are jointly participating in an ongoing Comprehensive Technical Assistance project at the waterworks, a new comprehensive performance evaluation is not required. If conducted, a comprehensive performance evaluation ~~must~~ shall be completed and submitted to the commissioner no later than 120 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.

c. Reporting source water monitoring results.

(1) Owners shall report results from the source water monitoring required in 12VAC5-590-420 B 3 a no later than 10 days after the end of the first month following the month when the sample is collected.

(2) Owners shall report the applicable information in (a) and (b) as follows for the source water monitoring required in 12VAC5-590-420 B 3 a.

(a) Owners shall report the following data elements for each *Cryptosporidium* analysis:

Data element
PWS ID
Facility ID
Sample collection date
Sample type (field or matrix spike)
Sample volume filtered (L), to nearest ¼ L
Was 100% of filtered volume examined
Number of oocysts counted

(i) For matrix spike samples, the owner shall also report the sample volume spiked and estimated number of oocysts spiked. These data are not required for field samples.

(ii) For samples in which less than 10 L is filtered or less than 100% of the sample volume is examined, the owner shall also report the number of filters used and the packed pellet volume.

(iii) For samples in which less than 100% of sample volume is examined, the owner shall also report the volume of resuspended concentrate and volume of this resuspension processed through immunomagnetic separation.

(b) Owners shall report the following data elements for each *E. coli* analysis:

Data element
1. PWS ID
2. Facility ID
3. Sample collection date
4. Analytical method number
5. Method type
6. Source type (flowing stream, lake/reservoir, GUDI)
7. *E. coli*/100 mL
8. Turbidity[a]

[FNa] Owners of waterworks serving fewer than 10,000 people that are not required to monitor for turbidity under in 12VAC5-590-420 B 3 a are not required to report turbidity with their *E. coli* results.

2. Disinfection information specified below shall be reported to the ~~division~~ district engineer within 10 days after the end of each month the waterworks serves water to the public. Information that shall be reported includes:

a. For each day, the lowest measurement of residual disinfectant concentration in ~~mg/l~~ mg/L in water entering the distribution system.

b. The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.2 ~~mg/l~~ mg/L and when the ~~division~~ district engineer was notified of the occurrence.

c. The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to 12VAC5-590-420 B.

(1) Number of instances where the residual disinfectant concentration is measured;

(2) Number of instances where the residual disinfectant concentration is not measured but HPC is measured;

(3) Number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

(4) Number of instances where no residual disinfectant concentration is detected and where HPC is greater than 500/mL;

(5) Number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/mL;

(6) For the current and previous month the system serves water to the public, the value of "V" in percent in the following formula:

$$V = \frac{c + d + e}{a + b} \text{ X } 100$$

a = the value in subdivision C 2 c (1) of this section

b = the value in subdivision C 2 c (2) of this section

c = the value in subdivision C 2 c (3) of this section

d = the value in subdivision C 2 c (4) of this section

e = the value in subdivision C 2 c (5) of this section

(7) If the division determines, based on site specific considerations, that a waterworks owner has no means for having a sample transported and analyzed for HPC by a certified laboratory within the requisite time and temperature conditions and that the waterworks is providing adequate disinfection in the distribution system, the requirements of subdivision C 2 c (1) through (6) of this section do not apply.

d. ~~A waterworks~~ An owner need not report the data listed in subdivision C 2 a of this section if all data listed in subdivisions C 2 a through c of this section remain on file at the waterworks and the ~~division~~ commissioner determines that the ~~waterworks~~ owner has submitted all

of the information required by subdivisions C 2 a through c of this section for the last 12 months.

3. If at any time the chlorine residual falls below 0.2 ~~mg/l~~ mg/L in the water entering the distribution system, the ~~waterworks~~ owner shall notify the ~~division~~ district engineer as soon as possible, but no later than by the end of the next business day. The ~~waterworks~~ owner also shall notify the ~~division~~ district engineer by the end of the next business day whether or not the residual was restored to at least 0.2 ~~mg/l~~ mg/L within four hours.

D. Reporting requirements for lead and copper. All ~~waterworks~~ owners shall report all of the following information to the ~~appropriate field office~~ district engineer in accordance with this section.

1. Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring.

a. ~~A waterworks~~ An owner shall report the information specified below for all tap water samples within the first 10 days following the end of each applicable monitoring period specified in 12VAC5-590-370 B 6 a, b and c (i.e., every six months, annually, or every three years).

(1) The results of all tap samples for lead and copper including location or a location site code and the criteria under 12VAC5-590-370 B 6 a (1) (c), (d), (e), (f) and/or (g) under which the site was selected for the waterworks' sampling pool;

(2) A certification that each first draw sample collected ~~by the waterworks~~ is one-liter in volume and, to the best of their knowledge, has stood motionless in the service line, or in the interior plumbing of a sampling site, for at least six hours;

(3) Where residents collected samples, a certification that each tap sample collected by the residents was taken after the ~~waterworks~~ owner informed them of proper sampling procedures specified in 12VAC5-590-370 B 6 a (2) (b);

(4) The 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period (calculated in accordance with 12VAC5-590-410 E 3);

(5) With the exception of initial tap sampling conducted pursuant to 12VAC5-590-370 B 6 a (4) (a), the ~~waterworks~~ owner shall designate any site ~~which~~ that was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed;

(6) The results of all tap samples for pH, and where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under 12VAC5-590-370 B 6 b (2) through (5);

(7) The results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters under 12VAC5-590-370 B 6 b (2) through (5).

b. By the applicable date in 12VAC5-590-370 B 6 a (4) (a) for commencement of monitoring, the owner of each community waterworks ~~which~~ that does not complete the targeted sampling pool with tier 1 sampling sites meeting the criteria in 12VAC5-590-370 B 6 a (1) (c) shall send a letter to the ~~appropriate field office~~ district engineer justifying the selection of tier 2 and/or tier 3 sampling sites under 12VAC5-590-370 B 6 a (1) (d) and/or (e).

c. By the applicable date in 12VAC5-590-370 B 6 a (4) (a) for commencement of monitoring, the owner of each nontransient, noncommunity waterworks ~~which~~ that does not complete the sampling pool with tier 1 sampling sites meeting the criteria in 12VAC5-590-370 B 6 a (1) (f) shall send a letter to the appropriate field office justifying the selection of sampling sites under 12VAC5-590-370 B 6 a (1) (g).

d. By the applicable date in 12VAC5-590-370 B 6 a (4) (a) for commencement of monitoring, the owner of each waterworks with lead service lines that is not able to locate the number of sites served by such lines required under 12VAC5-590-370 B 6 a (1) (b) (i) shall send a letter to the ~~appropriate field office~~ district engineer demonstrating why the owner was unable to locate a sufficient number of such sites based upon the information listed in 12VAC5-590-370 B 6 a (1) (b).

e. Each ~~waterworks~~ owner who requests that the commissioner reduce the number and frequency of sampling shall provide the information required under 12VAC5-590-370 B 6 a (4) (d).

2. Water supply (source water) monitoring reporting requirements.

a. ~~A waterworks~~ An owner shall report the sampling results for all source water samples collected in accordance with 12VAC5-590-370 B 6 c within the first 10 days following the end of each source water monitoring period (i.e., annually, per compliance period, per compliance cycle) specified in 12VAC5-590-370 B 6 c.

b. With the exception of the first round of source water sampling conducted pursuant to 12VAC5-590-370 B 6 c (2), the ~~waterworks~~ owner shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the sampling point has changed.

3. Corrosion control treatment reporting requirements. By the applicable dates under 12VAC5-590-420 C 2, ~~waterworks~~ owners shall report the following information:

a. For waterworks demonstrating that they have already optimized corrosion control, information required in 12VAC5-590-420 C 2 b (2) or (3).

b. For waterworks required to optimize corrosion control, the owner's recommendation regarding optimal corrosion control treatment under 12VAC5-590-420 C 1 a.

c. For waterworks required to evaluate the effectiveness of corrosion control treatments under 12VAC5-590-420 C 1 c, the information required by that subdivision.

d. For waterworks required to install optimal corrosion control designated by the commissioner under 12VAC5-590-420 C 1 d (1), a letter certifying that the owner has completed installing that treatment.

4. Water supply source water treatment reporting requirements. By the applicable dates in 12VAC5-590-420 D, ~~waterworks~~ owners shall provide the following information to the ~~appropriate field office~~ district engineer:

a. If required under 12VAC5-590-420 D 2 a, the owner's recommendation regarding source water treatment;

b. For waterworks required to install source water treatment under 12VAC5-590-420 D 2 b, a letter certifying that the ~~waterworks~~ owner has completed installing the treatment designated by the commissioner within 24 months after the commissioner designated the treatment.

5. Lead service line replacement reporting requirements. ~~Waterworks~~ ~~owners~~ Owners shall report the following information to the ~~appropriate field office~~ district engineer to demonstrate compliance with the requirements of 12VAC5-590-420 E:

a. Within 12 months after a waterworks exceeds the lead action level in sampling referred to in 12VAC5-590-420 E 1, the owner shall demonstrate in writing to the ~~appropriate field office~~ district engineer that the owner has conducted a materials evaluation, including the evaluation in 12VAC5-590-370 B 6 a (1), to identify the initial number of lead service lines in the distribution system, and shall provide the ~~appropriate field office~~ district engineer with the waterworks' schedule for replacing annually at least 7.0% of the initial number of lead service lines in its distribution system.

b. Within 12 months after a waterworks exceeds the lead action level in sampling referred to in 12VAC5-590-420 E 1, and every 12 months thereafter, the ~~waterworks~~ owner shall demonstrate to the ~~appropriate field office~~ district engineer in writing that the ~~waterworks~~ owner has either:

(1) Replaced in the previous 12 months at least 7.0% of the initial lead service lines (or a greater number of lines specified by the commissioner under 12VAC5-590-420 E 6) in the distribution system, or

(2) Conducted sampling ~~which~~ that demonstrates that the lead concentration in all service line samples from an individual line(s), taken pursuant to 12VAC5-590-370 B 6 a (7) (c), is less than or equal to 0.015 ~~mg/l~~ mg/L. In such cases, the total number of lines replaced and/or which meet the criteria in 12VAC5-590-420 E 3 shall equal at least 7.0% of the initial number of lead lines identified under subdivision D 5 a of this section (or the percentage specified by the commissioner under 12VAC5-590-420 E 6).

c. The annual letter submitted to the ~~appropriate field office~~ district engineer under subdivision D 5 b of this section shall contain the following information:

(1) The number of lead service lines scheduled to be replaced during the previous year of the waterworks' replacement schedule;

(2) The number and location of each lead service line replaced during the previous year of the waterworks' replacement schedule;

(3) If measured, the water lead concentration and location of each lead service line sampled, the sampling method, and the date of sampling.

d. As soon as practicable, but in no case later than three months after a waterworks exceeds the lead action level in sampling referred to in 12VAC5-590-420 E 1, any ~~waterworks~~ owner seeking to rebut the presumption that it has control over the entire lead service line pursuant to 12VAC5-590-420 E 4 shall submit a letter to the ~~appropriate field office~~ district engineer describing the legal authority (e.g., state statutes, municipal ordinances, public service contracts or other applicable legal authority) which limits the waterworks owner's control over the service lines and the extent of the waterworks owner's control.

6. Public education program reporting requirements. By December 31 of each year, the owner of any waterworks that is subject to the public education requirements in 12VAC5-590-420 F shall submit a letter to the ~~appropriate field office~~ district engineer demonstrating that the ~~waterworks~~ owner has delivered the public education materials that meet the content requirements in 12VAC5-590-420 F 1 and 2 and the delivery requirements in 12VAC5-590-420 F 3. This information shall include a list of all the newspapers, radio stations, television stations, facilities and organizations to which the owner delivered public education materials during the previous year. The owner shall submit the letter required by this subdivision annually for as long as it exceeds the lead action level.

7. Reporting of additional monitoring data. The owner of any waterworks which collects sampling data in addition to that required by this subpart shall report the results to the ~~appropriate field office~~ district engineer within the first 10 days following the end of the applicable monitoring period under 12VAC5-590-370 B 6 a, b and c during which the samples are collected.

E. Reporting requirements for disinfection byproducts. ~~Waterworks must~~ Owners shall report the following information in accordance with subsection A of this section. (The ~~field office~~ district engineer may choose to perform calculations and determine whether the PMCL was violated, in lieu of having the ~~waterworks~~ owner report that information):

~~1. A waterworks monitoring for TTHM and HAA5 under the requirements of 12VAC5-590-370 B 3 a on a quarterly or more frequent basis must report:~~

1. Running Annual Average Reporting:

a. The owner of a waterworks monitoring for TTHM and HAA5 under the requirements of 12VAC5-590-370 B 3 e (1) on a quarterly or more frequent basis shall report:

~~a.~~(1) The number of samples taken during the last quarter.

~~b.~~(2) The location, date, and result of each sample taken during the last quarter.

~~c.~~(3) The arithmetic average of all samples taken in the last quarter.

~~d.~~(4) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters.

~~e.~~(5) Whether, based on 12VAC5-590-410 C 2 b (1) (a), the PMCL was violated.

~~2 A waterworks~~ b. The owner of a waterworks monitoring for TTHMs and HAA5 under the requirements of 12VAC5-590-370 B 3 ~~a~~ e (1) less frequently than quarterly (but at least annually) ~~must~~ shall report:

~~a.~~(1) The number of samples taken during the last year.

~~b.~~(2) The location, date, and result of each sample taken during the last monitoring period.

~~c.~~(3) The arithmetic average of all samples taken over the last year.

~~d.~~(4) Whether, based on 12VAC5-590-410 C 2 b (1) (a) the PMCL was violated.

~~3 A~~ c. The owner of a waterworks monitoring for TTHMs and HAA5 under the requirements of 12VAC5-590-370 B 3 ~~a~~ e (1) less frequently than annually ~~must~~ shall report:

~~a.~~(1) The location, date, and result of the last sample taken.

~~b.~~ (2) Whether, based on 12VAC5-590-410 C 2 b (1) (a), the PMCL was violated.

2. Locational Running Annual Average (LRAA) Reporting:

a. Owners shall report the following information for each monitoring location to the commissioner:

(1) Number of samples taken during the last quarter.

(2) Date and results of each sample taken during the last quarter.

(3) Arithmetic average of quarterly results for the last four quarters for each LRAA, beginning at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter. If the LRAA calculated based on fewer than four quarters of data would cause the PMCL to be exceeded regardless of the monitoring results of subsequent quarters, the owner shall report this information to the commissioner as part of the first report due following the compliance date or anytime thereafter that this determination is made. If the owner is required to conduct monitoring at a frequency that is less than quarterly, the owner shall make compliance calculations beginning with the first compliance sample taken after the compliance date, unless the owner is required to conduct increased monitoring under 12VAC5-590-370 B 3 e (3) (g).

(4) Whether, based on Table 2.13, the PMCL was violated at any monitoring location.

(5) Any operational evaluation levels, under 12VAC5-590-410 C 2 b(1) (b) (iv), that were exceeded during the quarter and, if so, the location and date, and the calculated TTHM and HAA5 levels.

b. Owners of waterworks using surface water or GUDI seeking to qualify for or remain on reduced TTHM/HAA5 monitoring shall report the following source water TOC information for each treatment plant that treats surface water or ground water under the direct influence of surface water to the commissioner within 10 days of the end of any quarter in which monitoring is required:

(1) The number of source water TOC samples taken each month during last quarter.

(2) The date and result of each sample taken during last quarter.

(3) The quarterly average of monthly samples taken during last quarter or the result of the quarterly sample.

(4) The running annual average (RAA) of quarterly averages from the past four quarters.

(5) Whether the RAA exceeded 4.0 mg/L.

~~4. A~~ 3. The owner of a waterworks monitoring for chlorite under the requirements of 12VAC5-590-370 B 3 f ~~must~~ shall report:

a. The number of entry point samples taken each month for the last three months.

b. The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter.

c. For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system.

d. Whether, based on 12VAC5-590-410 C 2 b, the PMCL was violated, in which month and how many times it was violated each month.

~~5. A~~ 4. The owner of a waterworks monitoring for bromate under the requirements of 12VAC5-590-370 B 3 g ~~must~~ shall report:

a. The number of samples taken during the last quarter.

b. The location, date, and result of each sample taken during the last quarter.

c. The arithmetic average of the monthly arithmetic averages of all samples taken in the last year.

d. Whether, based on 12VAC5-590-410 C 2 b, the PMCL was violated.

F. Reporting requirements for disinfectants. ~~Waterworks must~~ Owners shall report the information specified below in accordance with subsection A of this section. (The ~~field office~~ district engineer may choose to perform calculations and determine whether the MRDL was violated, in lieu of having the ~~waterworks~~ owner report that information):

1. ~~A~~ The owner of a waterworks monitoring for chlorine or chloramines under the requirements of 12VAC5-590-370 B 3 h ~~must~~ shall report:

a. The number of samples taken during each month of the last quarter.

b. The monthly arithmetic average of all samples taken in each month for the last 12 months.

c. The arithmetic average of all monthly averages for the last 12 months.

d. Whether, based on 12VAC5-590-410 C 2 c, the MRDL was violated.

2. ~~A~~ The owner of a waterworks monitoring for chlorine dioxide under the requirements of 12VAC5-590-370 B 3 h ~~must~~ shall report:

a. The dates, results, and locations of samples taken during the last quarter.

b. Whether, based on 12VAC5-590-410 C 2 c, the MRDL was violated.

c. Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

G. Reporting requirements for disinfection byproduct precursors and enhanced coagulation or enhanced softening. ~~Waterworks must~~ Owners shall report the following information in accordance with subsection A of this section. (The ~~field office~~ district engineer may choose to perform calculations and determine whether the treatment technique was met, in lieu of having the ~~waterworks~~ owner report that information):

1. ~~A~~ The owner of a waterworks monitoring monthly or quarterly for TOC under the requirements of 12VAC5-590-370 B 3 i and required to meet the enhanced coagulation or enhanced softening requirements in 12VAC5-590-420 H 2 b or c ~~must~~ shall report:

a. The number of paired (source water and treated water) samples taken during the last quarter.

b. The location, date, and results of each paired sample and associated alkalinity taken during the last quarter.

c. For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal.

d. Calculations for determining compliance with the TOC percent removal requirements, as provided in 12VAC5-590-420 H 3 a.

e. Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in 12VAC5-590-420 H 2 a for the last four quarters.

2. ~~A~~ The owner of a waterworks monitoring monthly or quarterly for TOC under the requirements of 12VAC5-590-370 B 3 i and meeting one or more of the alternative compliance criteria in 12VAC5-590-420 H 1 b or c ~~must~~ shall report:

a. The alternative compliance criterion that the system is using.

b. The number of paired samples taken during the last quarter.

c. The location, date, and result of each paired sample and associated alkalinity taken during the last quarter.

d. The running annual arithmetic average based on monthly averages (or quarterly samples) of source water

TOC for systems meeting a criterion in 12VAC5-590-420 H 1 b (1) or (3) or of treated water TOC for systems meeting the criterion in 12VAC5-590-420 H 1 b (2).

e. The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in 12VAC5-590-420 H 1 b (5) or of treated water SUVA for systems meeting the criterion in 12VAC5-590-420 H 1 b (6).

f. The running annual average of source water alkalinity for systems meeting the criterion in 12VAC5-590-420 H 1 b (3) and of treated water alkalinity for systems meeting the criterion in 12VAC5-590-420 H 1 c (1).

g. The running annual average for both TTHM and HAA5 for systems meeting the criterion in 12VAC5-590-420 H 1 b (3) or (4).

h. The running annual average of the amount of magnesium hardness removal (as $CaCO_3$, in ~~mg/l~~ mg/L) for systems meeting the criterion in 12VAC5-590-420 H 1 c (2).

i. Whether the system is in compliance with the particular alternative compliance criterion in 12VAC5-590-420 H 1 b or c.

H. Reporting of analytical results to the ~~appropriate field office~~ district engineer will not be required in instances where the state laboratory performs the analysis and reports same to ~~that office~~ the district engineer.

I. Recycle flow reporting requirements. ~~Any~~ The owner of any waterworks supplied by a surface water source and waterworks supplied by a groundwater source under the direct influence of surface water that employs conventional filtration or direct filtration treatment ~~must~~ shall notify the ~~state~~ commissioner in writing by December 8, 2003, if the system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes. This notification ~~must~~ shall include, as a minimum:

1. A plant schematic showing the origin of all flows that are recycled, including but not limited to spent filter backwash water, thickener supernatant, and liquids from dewatering processes. The schematic shall also specify the hydraulic conveyance used to transport all recycle flows and the location where recycle flows are reintroduced back into the treatment plant.

2. Typical recycle flow in gallons per minute (gpm), the highest observed plant flow experienced in the previous year (gpm), design flow for the treatment plant (gpm), and state-approved operating capacity for the plant.

J. Reporting of requirements for enhanced treatment for cryptosporidium.

1. Owners shall report sampling schedules under 12VAC5-590-420 B 3 a (5) and source water monitoring results under 12VAC5-590-530 C 1 c unless they notify the commissioner that they will not conduct source water monitoring due to meeting the criteria of 12VAC5-590-420 B 3 a (4).

2. Owners shall report the use of uncovered finished water storage facilities to the commissioner as described in 12VAC5-590-420 L.

3. Owners of waterworks that provide filtration shall report their Cryptosporidium bin classification as described in 12VAC-590-420 B 3 c.

4. Owners shall report disinfection profiles and benchmarks to the commissioner as described in 12VAC5-590-420 B 3 b (1) through (2) prior to making a significant change in disinfection practice.

5. Owners shall report to the commissioner in accordance with the following table for any microbial toolbox options used to comply with treatment requirements under 12VAC5-590-420 B 3 c (2). Alternatively, the commissioner may approve a waterworks to certify operation within required parameters for treatment credit rather than reporting monthly operational data for toolbox options.

Microbial Toolbox Reporting Requirements

Toolbox option	Owners shall submit the following information	On the following schedule
Watershed control program (WCP)	Notice of intention to develop a new or continue an existing watershed control program	No later than two years before the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
	Watershed control plan	No later than one year before the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).

	Annual watershed control program status report	Every 12 months, beginning one year after the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
	Watershed sanitary survey report	For community waterworks, every three years beginning three years after the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3). For noncommunity waterworks, every five years beginning five years after the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
Alternative source/intake management	Verification that waterworks has relocated the intake or adopted the intake withdrawal procedure reflected in monitoring results	No later than the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
Presedimentation	Monthly verification of the following: (i) Continuous basin operation (ii) Treatment of 100% of the flow (iii) Continuous addition of a coagulant (iv) At least 0.5-log mean reduction of influent turbidity or compliance with alternative performance criteria approved by the commissioner.	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
Two-stage lime softening	Monthly verification of the following: (i) Chemical addition and hardness precipitation occurred in two separate and sequential softening stages prior to filtration (ii) Both stages treated 100% of the plant flow	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
Bank filtration	Initial demonstration of the following: (i) Unconsolidated, predominantly sandy aquifer (ii) Setback distance of at least 25 ft. (0.5-log credit) or 50 ft. (1.0-log credit)	No later than the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).

	If monthly average of daily max turbidity is greater than 1 NTU then system shall report result and submit an assessment of the cause.	Report within 30 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
Combined filter performance	Monthly verification of combined filter effluent (CFE) turbidity levels less than or equal to 0.15 NTU in at least 95% of the four-hour CFE measurements taken each month	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
Individual filter performance	Monthly verification of the following: (i) Individual filter effluent (IFE) turbidity levels less than or equal to 0.15 NTU in at least 95% of samples each month in each filter (ii) No individual filter greater than 0.3 NTU in two consecutive readings 15 minutes apart	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
Demonstration of performance	Results from testing following a protocol approved by the commissioner.	No later than the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
	(ii) As required by the commissioner, monthly verification of operation within conditions of commissioner approval for demonstration of performance credit	Within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
Bag filters and cartridge filters	Demonstration that the following criteria are met : (i) Process meets the definition of bag or cartridge filtration (ii) Removal efficiency established through challenge testing that meets criteria in 12VAC5-590-420 B 3 d (6) (a).	No later than the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
	Monthly verification that 100% of plant flow was filtered	Within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).

Membrane filtration	Results of verification testing demonstrating the following: (i) Removal efficiency established through challenge testing that meets criteria in this subpart (ii) Integrity test method and parameters, including resolution, sensitivity, test frequency, control limits, and associated baseline	No later than the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
	Monthly report summarizing the following: (i) All direct integrity tests above the control limit; (ii) If applicable, any turbidity or alternative indirect integrity monitoring approved by the commissioner results triggering direct integrity testing and the corrective action that was taken	Within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
Second stage filtration	Monthly verification that 100% of flow was filtered through both stages and that first stage was preceded by a coagulation step	Within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
Slow sand filtration (as secondary filter)	Monthly verification that both a slow sand filter and a preceding separate stage of filtration treated 100% of flow from surface water or groundwater under the direct influence of surface water sources.	Within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
Chlorine dioxide	Summary of CT values for each day as described in 12VAC5-590-420 B 3 d (7)(b)(i).	Within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
Ozone	Summary of CT values for each day as described in 12VAC5-590-420 B 3 d (7)(b)(ii).	Within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).
UV	Validation test results demonstrating operating conditions that achieve required UV dose	No later than the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).

	Monthly report summarizing the percentage of water entering the distribution system that was not treated by UV reactors operating within validated conditions for the required dose as specified in 12VAC5-590-420 B 3 d (7) (c).	Within 10 days following the month in which monitoring was conducted, beginning on the applicable treatment compliance date in 12VAC5-590-420 B 3 c (3).

~~J.~~ K. Information to be included on the operation monthly report shall be determined by the ~~division~~ commissioner for each waterworks on an individual basis. Appendix G contains suggested monthly operation report requirements.

12VAC5-590-540. Public notices.

A. All ~~community and noncommunity waterworks~~ owners shall give public notice to (i) persons served by the waterworks and (ii) the owner of any consecutive waterworks to which it sells or otherwise provides water under the following circumstances:

1. Tier 1.

a. Violation of the PMCL for total coliforms when fecal coliform or *E. coli* are present in the distribution system;

b. Failure to test for fecal coliforms or *E. coli* when any repeat sample tests positive for coliform;

c. Violation of the PMCL for nitrate, ~~nitrate,~~ nitrite, or total nitrate and nitrite;

d. Failure to take a confirmation sample within 24 hours of the waterworks receipt of the first sample showing an exceedance of the nitrate or nitrite PMCL;

e. Exceedance of the nitrate PMCL by noncommunity waterworks, where permitted to exceed the PMCL by the commissioner;

f. Violation of the MRDL for chlorine dioxide when one or more samples taken in the distribution system the day following an exceedance of the MRDL at the entry point of the distribution system exceed the MRDL;

g. Failure to monitor chlorine dioxide residuals in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system;

h. Violation of the treatment technique requirements for filtration and disinfection resulting from a single exceedance of the maximum allowable turbidity limit, where the commissioner determines after consultation that a Tier 1 notice is required;

i. Failure to consult with the commissioner within 24 hours after the owner learns of the violation of the treatment technique requirements for filtration and disinfection resulting from a single exceedance of the maximum allowable turbidity limit;

j. Occurrence of a waterborne disease outbreak or other waterborne emergency (such as a failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination);

k. Detection of *E. coli*, enterococci, or coliphage in groundwater source samples;

~~k.~~ l. Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the commissioner on a case-by-case basis.

2. Tier 2.

a. All violations of the PMCL, MRDL, and treatment technique requirements, except where a Tier 1 public notice is required or where the commissioner determines that a Tier 1 notice is required per subdivision A 1 ~~k~~ l of this subsection;

b. Violations of the monitoring and testing procedure requirements, where the commissioner determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation; ~~and~~

c. Failure to comply with the terms and conditions of any variance or exemption in place~~.~~;

d. Failure to take corrective action or failure to maintain at least four-log treatment of viruses (using inactivation, removal, or an approved combination of four-log virus inactivation and removal) before or at the first customer under the treatment technique requirements for waterworks with groundwater sources.

3. Tier 3.

a. Monitoring violations, except where a Tier 1 public notice is required per subdivisions 1 d and 1 g of this subsection, or where the commissioner determines that a Tier 2 public notice is required per subdivision 2 b of this subsection;

b. Failure to comply with a testing procedure, except where a Tier 1 notice is required per subdivision 1 b of

this subsection or where the commissioner determines that a Tier 2 notice is required per subdivision 2 b of this subsection;

c. Operation under a variance or an exemption to a PMCL or treatment technique requirement;

d. Availability of unregulated contaminant monitoring results; and

e. Exceedance of the fluoride secondary maximum contaminant level (SMCL).

B. If a waterworks has a violation, failure, exceedance, or situation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the commissioner may allow the owner to limit distribution of the public notice to only those persons served by that portion of the waterworks which is out of compliance. The decision granting limited distribution of the public notice shall be issued in writing.

C. Public notice distribution requirements.

1. For Tier 1 violations, exceedances, or situations, the owner shall:

a. Provide a public notice as soon as practical but no later than 24 hours after the ~~waterworks~~ owner learns of the violation, exceedance, or situation;

b. Initiate consultation with the commissioner as soon as practical, but no later than 24 hours after the ~~waterworks~~ owner learns of the violation or situation, to determine additional public notice requirements;

c. Comply with any additional public notice requirements, including any repeat notices or direction on the duration of the posted notices, that are established as a result of the consultation with the commissioner. Such requirements may include the timing, form, manner, frequency, and content of repeat notices (if any) and other actions designed to reach all persons served; and

d. Provide the public notice in a form and manner reasonably calculated to reach all persons served. The form and manner shall fit the specific situation, and shall be designed to reach residential, transient, and non-transient users of the waterworks. In order to reach all persons served, owners shall use, at a minimum, one or more of the following forms of delivery:

(1) Appropriate broadcast media (such as radio and television);

(2) Posting of the public notice in conspicuous locations throughout the area served by the waterworks;

(3) Hand delivery of the public notice to persons served by the water system; or

(4) Another delivery method approved in writing by the commissioner.

2. For Tier 2 violations, exceedances, or situations the owner shall:

a. Provide the public notice as soon as practical, but no later than 30 days after the ~~waterworks~~ owner learns of the violation, exceedance, or situation. The commissioner may allow, on a case-by-case determination, additional time for the initial notice of up to three months from the date the ~~waterworks~~ owner learns of the violation, exceedance, or situation; however, the commissioner shall not grant an extension to the 30-day deadline for any unresolved violation.

b. Repeat the public notice every three months as long as the violation, exceedance, or situation persists, unless the commissioner determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstance shall the repeat notice be given less frequently than once per year. Repeat notice frequency less than every three months shall not be allowed for (i) a PMCL violation total coliforms; (ii) a treatment technique violation for filtration and disinfection; and (iii) other ongoing violations, exceedances, or situations.

c. Consult with the commissioner as soon as practical but no later than 24 hours after the ~~waterworks~~ owner learns of a violation of the treatment technique requirements for filtration and disinfection resulting from a single exceedance of the maximum allowable turbidity limit to determine whether a Tier 1 public notice is required to protect public health. If consultation does not take place within the 24-hour period, the ~~waterworks~~ owner shall distribute a Tier 1 public notice of the violation within the next 24 hours (i.e., no later than 48 hours after the ~~waterworks~~ owner learns of the violation).

d. Provide the initial public notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period.

(1) For community waterworks, the owner shall:

(a) Mail or otherwise directly deliver the public notice to each customer receiving a bill and to other service connections to which water is delivered by the waterworks; and

(b) Use any other distribution method reasonably calculated to reach other persons regularly served by the waterworks, if they would not normally be reached by the notice required in subdivision 2 d (1) (a) of this subsection. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include: Publication in

a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places served by the system or on the Internet; or delivery to community organizations.

(2) For noncommunity waterworks, the owner shall:

(a) Post the public notice in conspicuous locations throughout ~~The~~ the distribution system frequented by persons served by the waterworks, or by mail or direct delivery to each customer and service connection (where known); and

(b) Use any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required in subdivision 2 d (2) (a) of this subsection. Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by.

Other methods may include publication in a local newspaper or newsletter distributed to customers, use of e-mail to notify employees or students, or delivery of multiple copies in central locations (e.g., community centers).

e. Maintain a posted public notice in place for as long as the violation, exceedance, or situation persists, but in no case for less than seven days, even if the violation, exceedance, or situation is resolved.

3. For Tier 3 violations, exceedances, or situations the owner shall:

a. Provide the public notice not later than one year after the ~~waterworks~~ owner learns of the violation, exceedance, or situation or begins operating under a variance or exemption.

b. Repeat the public notice annually for as long as the violation, exceedance, variance, exemption, or other situation persists.

c. Maintain a posted public notice in place for as long as the violation, exceedance, variance, exemption, or other situation persists, but in no case less than seven days even if the violation or situation is resolved.

d. Instead of individual Tier 3 public notices, the owner may use an annual report detailing all violations, exceedances, and situations that occurred during the previous twelve months, as long as the timing requirements of subdivision 3 a of this subsection are met. For community waterworks the Consumer Confidence Report (CCR) may be used as a vehicle for the initial Tier 3 public notice and all required repeat notices, provided:

(1) The CCR is provided to persons served by the waterworks no later than 12 months after the ~~waterworks~~ owner learns of the violation, exceedance, or other situation;

(2) The Tier 3 public notice contained in the CCR meets the content requirements in subsection E of this section.

(3)The CCR is distributed in a manner meeting the delivery requirements in subdivision D 3 e of this section.

e. For community waterworks the owner shall:

(1) Mail or otherwise directly deliver the public notice to each customer receiving a bill and to other service connections to which water is delivered by the waterworks; and

(2) Use any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in subdivision 3 e (1) of this subsection. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include publication in a local newspaper, delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers), posting in public places or on the Internet, or delivery to community organizations.

f. For noncommunity waterworks the owner shall:

(1) Post the public notice in conspicuous locations throughout the distribution system frequented by persons served by the waterworks, or by mail or direct delivery to each customer and service connection (where known); and

(2) Use any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice required in subdivision 3 f (1) of this subsection. Such persons may include those who may not see a posted notice because the notice is not in a location they routinely pass by. Other methods may include: Publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).

D. Public notice contents.

1. Each public notice for PMCL, MRDL, and TT violations and other situations requiring a public notice shall include the following elements:

a. A description of the violation, exceedance, or situation, including the contaminant(s) of concern, and (as applicable) the contaminant level(s);

b. When the violation or situation occurred;

c. Any potential adverse health effects from the violation, exceedance, or situation, including the standard language under subdivision 5 a or 5 b of this subsection, whichever is applicable;

d. The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;

e. Whether alternative water supplies should be used;

f. What actions consumers should take, including when they should seek medical help, if known;

g. What the ~~waterworks~~ owner is doing to correct the violation, exceedance, or situation;

h. When the ~~waterworks~~ owner expects the waterworks to return to compliance or resolve the situation;

i. The name, business address, and phone number of the ~~waterworks~~ owner, operator, or designee as a source of additional information concerning the notice; and

j. A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under subdivision 5 c of this subsection, where applicable.

2. Each public notice for a waterworks that has been granted a variance or exemption shall include the following elements:

a. An explanation of the reasons for the variance or exemption;

b. The date on which the variance or exemption was issued;

c. A brief status report on the steps the ~~waterworks~~ owner is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and

d. A notice of any opportunity for public input in the review of the variance or exemption.

3. Each public notice for a waterworks that violates the conditions of a variance or exemption shall contain the ten elements listed in subdivision 1 of this subsection.

4. Each public notice shall:

a. Be displayed in a conspicuous way when printed or posted;

b. Not contain overly technical language or very small print;

c. Not be formatted in a way that defeats the purpose of the notice;

d. Not contain language which nullifies the purpose of the notice.

e. Contain information in the appropriate language(s), for waterworks serving a large proportion of non-English speaking consumers, regarding the importance of the notice or contain a telephone number or address where persons served may contact the ~~waterworks~~ owner to obtain a translated copy of the notice or to request assistance in the appropriate language.

5. The public notice shall include the following standard language:

a. For PMCL or MRDL violations, treatment technique violations, and violations of the condition of a variance or exemption--standard health effects language as specified in Appendix O corresponding to each PMCL, MRDL, and treatment technique violation and for each violation of a condition of a variance or exemption.

b. For monitoring and testing procedure violations -- standard language as specified below, including the language necessary to fill in the blanks:

We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During (compliance period), we (did not monitor or test or did not complete all monitoring or testing) for (contaminant(s)), and therefore cannot be sure of the quality of your drinking water during that time.

c. For all public notices--standard language (where applicable), as specified below:

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

E. Public notice to new billing units or customers.

1. For community waterworks the owner shall give a copy of the most recent public notice for any continuing violation, variance or exemption, or other ongoing situations requiring a public notice to all new billing units or new customers prior to or at the time service begins.

2. For noncommunity waterworks the owner shall continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation, variance or exemption, or other situation requiring a public notice for as long as the violation, variance, exemption, or other situation persists.

F. Special notice of the availability of unregulated contaminant monitoring results.

1. The owner of a community waterworks or non-transient, noncommunity waterworks shall notify persons served by the system of the availability of the results of such sampling no later than 12 months after the monitoring results are known.

2. The special notice shall meet the requirements for a Tier 3 public notice and shall identify a person and telephone number to contact for information on the monitoring results.

G. Special notice for exceedance of the SMCL for fluoride.

1. Community waterworks that exceed the ~~fluoride secondary maximum contaminant level (SMCL)~~ SMCL of 2 ~~mg/l~~ mg/L, but do not exceed the ~~primary maximum contaminant level (PMCL)~~ PMCL of 4 ~~mg/l~~ mg/L for fluoride, shall provide public notice to persons served as soon as practical but no later than 12 months from the day the ~~waterworks~~ owner learns of the exceedance.

2. A copy of the notice shall be sent to all new billing units and new customers at the time service begins and to the ~~engineering field office~~ district dngineer.

3. The owner shall repeat the notice at least annually for as long as the SMCL is exceeded.

4. If the public notice is posted, the notice shall remain in place for as long as the SMCL is exceeded, but in no case less than seven days even if the exceedance is eliminated.

5. On a case-by-case basis, the commissioner may require an initial notice sooner than 12 months and repeat notices more frequently than annually.

6. The form and manner of the public notice (including repeat notices) shall meet the requirements for a Tier 3 public notice.

7. The public notice shall contain the following language, including the language necessary to fill in the blanks:

This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 milligrams per liter ~~(mg/l)~~ (mg/L) of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). The drinking water provided by your community waterworks (name) has a fluoride concentration of (insert value) ~~mg/l~~ mg/L. Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the excess fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride-containing products by young children. Older children and adults may safely drink the water. Drinking water containing more than 4 ~~mg/l~~ mg/L of fluoride (the U.S. Environmental Protection Agency's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than 4 ~~mg/l~~ mg/L of fluoride, but we are required to notify you when we discover that the fluoride levels in your drinking water exceed 2 ~~mg/l~~ mg/L because of this cosmetic dental problem. For more information, please call (name of water system contact) of (name of community waterworks) at (phone number). Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1-877-NSF-HELP.

H. Special notice for nitrate exceedances above PMCL by noncommunity waterworks.

1. The owner of a noncommunity waterworks granted permission by the commissioner to exceed the nitrate PMCL shall provide public notice to persons served meeting the requirements for a Tier 1 notice.

2. The public notice shall be posted continuously and shall indicate the fact that nitrate levels exceed 10 ~~mg/l~~ mg/L and the potential health effects of exposure, meeting the requirements for Tier 1 public notice delivery and content.

I. Special notice for repeated failure to conduct sampling of the source water for *Cryptosporidium*.

1. An owner who is required to sample source water shall provide public notice to persons served when he has failed to collect any three months of required samples. The form and manner of the public notice shall satisfy the requirements of a Tier 2 notice, and the notice shall be repeated in accordance with the requirements of a Tier 2 notice.

2. The notice shall contain the following language, including the language to fill in the blanks:

We are required to monitor the source of your drinking water for *Cryptosporidium*. Results of the monitoring are to be used to determine whether water treatment at the [blank – fill in treatment plant name] is sufficient to adequately remove *Cryptosporidium* from your drinking water. We are required to complete this monitoring and make this determination by [blank – fill in required bin determination date]. We "did not monitor" or "did not complete all monitoring or testing" on schedule and, therefore , we may not be able to determine by the required date what treatment modifications, if any, shall be made to ensure adequate *Cryptosporidium* removal. Missing this deadline may, in turn, jeopardize our ability to have the

required treatment modifications, if any, completed by the deadline required, [blank – fill in date].

For more information, please call [blank – fill in name of waterworks contact] of [blank – fill in name of waterworks] at [blank – fill in phone number].

3. The notice shall contain a description of what the owner is doing to correct the violation and when the owner expects the waterworks to return to compliance or resolve the situation.

J. Special notice for failure to determine bin classification or mean *Cryptosporidium* level.

1. An owner who is required to determine a bin classification or to determine mean Cryptosporidium level shall provide public notice to persons served when the determination has not been made as required. The form and manner of the public notice shall satisfy the requirements of a Tier 2 notice, and the notice shall be repeated in accordance with the requirements of a Tier 2 notice. However, a public notice is not required if the owner is complying with a schedule to address the violation approved by the ODW.

2. The notice shall contain the following language, including the language to fill in the blanks:

We are required to monitor the source of your drinking water for Cryptosporidium in order to determine by [blank – fill in date] whether water treatment at the [blank – fill in treatment plant name] is sufficient to adequately remove Cryptosporidium from you drinking water. We have not made this determination by the required date. Our failure to do this may jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of [blank – fill in date]. For more information, please call [blank – fill in name of waterworks contact] of [blank – fill in name of waterworks] at [blank – fill in telephone number].

3. The notice shall contain a description of what the owner is doing to correct the violation and when the owner expects the waterworks to return to compliance or resolve the situation.

K. The ~~office~~ district engineer may give notice to the public required by this section on behalf of the owner ~~of the waterworks~~ if the ~~office~~ district engineer complies with the requirements of this section. However, the owner ~~of the waterworks~~ remains legally responsible for ensuring that the requirements of this section are met.

~~J~~ L. Within 10 days of completion of each initial and repeat public notice, the ~~waterworks~~ owner shall provide the ~~appropriate field office~~ district engineer:

1. A certification that he has fully complied with the public notice requirements; and

2. A representative copy of each type of notice distributed, published, posted and made available to the persons served by the waterworks and to the media.

~~K~~ M. The owner shall maintain copies of each public notice and certification for at least three years after issuance.

12VAC5-590-545. Consumer confidence reports.

A. Purpose and applicability.

1. Each community waterworks owner shall deliver to his customers an annual report that contains information on the quality of the water delivered by the waterworks and characterizes the risks, if any, from exposure to contaminants detected in the drinking water.

2. For the purpose of this section, customers are defined as billing units or service connections to which water is delivered by a community waterworks.

3. For the purpose of this section, a contaminant is detected when the laboratory reports the contaminant level as a measured level and not as nondetected (ND) or less than ~~(<)~~ (≤) a certain level. The owner shall utilize a laboratory that complies with 12VAC5-590-340, and the laboratory's analytical and reporting procedures shall have been in accordance with 12—VAC—5-590-440; laboratory certification requirements of the Commonwealth of Virginia, Department of General Services, Division of Consolidated Laboratory Services; and consistent with current U. S. Environmental Protection Agency regulations found at 40 CFR Part 141.

B. Effective dates.

1. Each existing community waterworks owner shall deliver his report by July 1 annually.

2. The owner of a new community waterworks shall deliver his first report by July 1 of the year after its first full calendar year in operation and annually thereafter.

3. The owner of a community waterworks that sells water to a consecutive waterworks shall deliver the applicable information necessary to comply with the requirements contained in this section to the consecutive waterworks by April 1 annually, or on a date mutually agreed upon by the seller and the purchaser and specifically included in a contract between the parties.

C. Content.

1. Each community waterworks owner shall provide his customers an annual report that contains the information on the source of the water delivered as follows:

a. Each report shall identify the source or sources of the water delivered by the community waterworks by providing information on:

(1) The type of the water (e.g., surface water, ground water); and

(2) The commonly used name, if any, and location of the body or bodies of water.

b. Where a source water assessment has been completed, the report shall:

(1) Notify consumers of the availability of the assessment;

(2) Describe the means to obtain the assessment; and

(3) Include a brief summary of the waterworks' susceptibility to potential sources of contamination.

c. The ~~waterworks~~ owner should highlight in the report significant sources of contamination in the source water area if such information is readily available.

2. For the purpose of compliance with this section, each report shall include the following definitions:

a. "Maximum contaminant level goal" or "MCLG" (See 12VAC5-590-10).

b. "Maximum contaminant level" or "MCL" (See 12VAC5-590-10).

c. A report for a community water system operating under a variance or an exemption issued by the commissioner under 12VAC5-590-140 and 12VAC5-590-150 shall include the following definition: "Variances and exemptions" means state or EPA permission not to meet an MCL or a treatment technique under certain conditions.

d. A report that contains data on contaminants that EPA regulates using any of the following terms shall include the applicable definitions:

(1) "Treatment technique" means a required process intended to reduce the level of a contaminant in drinking water.

(2) "Action level" means the concentration of a contaminant that, if exceeded, triggers treatment or other requirements that ~~a water system must~~ an owner shall follow.

(3) "Maximum residual disinfectant level goal" or "MRDLG" means the level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(4) "Maximum residual disinfectant level" or "MRDL" means the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

3. Information on detected contaminants.

a. This section specifies the requirements for information to be included in each report for the following contaminants:

(1) Contaminants subject to a PMCL, action level, maximum residual disinfectant level, or treatment technique as specified in 12VAC5-590-370;

(2) Unregulated contaminants subject to monitoring as specified in 12VAC5-590-370; and

(3) Disinfection byproducts or microbial contaminants, except *Cryptosporidium*, for which monitoring is required by Information Collection Rule (40 CFR 141.142 and 141.143 (7-1-97 Edition)), except as provided under subdivision 5 a of this subsection, and which are detected in the finished water.

b. The data relating to these contaminants shall be displayed in one table or in several adjacent tables. Any additional monitoring results that a community waterworks owner chooses to include in the report shall be displayed separately.

c. The data shall be derived from data collected to comply with EPA and state monitoring and analytical requirements during the calendar year preceding the year the report is due, except that:

(1) Where ~~a waterworks~~ an owner is allowed to monitor for contaminants specified in subdivision 3 a (1) and (3) of this subsection less often than once a year, the table or tables shall include the date and results of the most recent sampling, and the report shall include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than five years need be included.

(2) Results of monitoring in compliance with the Information Collection Rule (40 CFR 141.142 and 141.143 (7-1-97 Edition)) need only be included for five years from the date of last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

d. For detected contaminants subject to a PMCL, action level, or treatment technique as specified in 12VAC5-590-370 and listed in Tables 2.1, 2.2 (Primary Maximum Contaminant Levels only), 2.3, 2.4 (Primary Maximum Contaminant Levels only), and 2.5, the table or tables ~~must~~ shall contain:

(1) The PMCL for that contaminant expressed as a number equal to or greater than 1.0 as provided in Appendix O, with an exception for beta/photon emitters. When the detected level of beta/photon emitters has been reported in the units of pCi/L and does not exceed 50

pCi/L, the report may list the PMCL as 50 pCi/L. In this case, the ~~waterworks~~ owner shall include in the report the following footnote: The PMCL for beta particles is 4 mrem/year. EPA considers 50 pCi/L to be the level of concern for beta particles;

(2) The MCLG for that contaminant expressed in the same units as the PMCL as provided in Appendix O;

(3) If there is no PMCL for a detected contaminant, the table ~~must~~ shall indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report shall include the definitions for treatment technique and/or action level, as appropriate, specified in subdivision 3 d of this subsection;

(4) For contaminants subject to a PMCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance and the range of detected levels is as follows:

(a) When compliance with the PMCL is determined annually or less frequently, the highest detected level at any sampling point and the range of detected levels expressed in the same units as the PMCL.

(b) When compliance with the PMCL is determined by calculating a running annual average of all samples taken at a sampling point, the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the PMCL. For the PMCLs for TTHM and HAA5, owner shall include the highest locational running annual average and the range of individual sample results for all sampling points expressed in the same units as the PMCL. If more than one location exceeds the TTHM or HAA5 PMCL, the owner shall include the locational running annual averages for all locations that exceed the PMCL.

(c) When compliance with the PMCL is determined on a systemwide basis by calculating a running annual average of all samples at all sampling points, the average and range of detection expressed in the same units as the PMCL. The range of detection for TTHM and HAA5 shall include individual sample results for the IDSE conducted under 12VAC5-590-370 B 3 e (2) for the calendar year that the IDSE samples were taken.

(5) For turbidity, the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 12VAC5-590-420 for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity;

(6) For lead and copper, the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level;

(7) For total coliform:

(a) The highest monthly number of positive samples for waterworks collecting fewer than 40 samples per month;

(b) The highest monthly percentage of positive samples for ~~systems~~ waterworks collecting at least 40 samples per month;

(8) For fecal coliform, the total number of positive samples;

(9) The likely source or sources of detected contaminants. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the ~~waterworks~~ owner. If the ~~waterworks~~ owner lacks specific information on the likely source, the report shall include one or more of the typical sources for that contaminant listed in Appendix O that are most applicable to the system.

e. If a community waterworks owner distributes water to his customers from multiple hydraulically independent distribution systems that are fed by different raw water sources:

(1) The table shall contain a separate column for each service area and the report shall identify each separate distribution system; or

(2) ~~Waterworks~~ The owner shall produce a separate report tailored to include data for each service area.

f. The table or tables shall clearly identify any data indicating violations of PMCLs, MRDLs, or treatment techniques and the report shall contain a clear and readily understandable explanation of the violation including:

(1) The length of the violation;

(2) The potential adverse health effects using the relevant language of Appendix O; and

(3) Actions taken by the waterworks owner to address the violation.

g. For detected unregulated contaminants subject to monitoring as specified in 12VAC5-590-370 and listed in Tables 2.6 and 2.7, for which monitoring is required, the table or tables shall contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.

4. Information on *Cryptosporidium*, radon, and other contaminants:

a. If the ~~waterworks~~ owner has performed any monitoring for *Cryptosporidium*, including monitoring performed to satisfy the requirements of the Informational Collection Rule (40 CFR 141.143 (7-1-97

Edition)), which indicates that *Cryptosporidium* may be present in the source water or the finished water, the report shall include:

(1) A summary of the results of the monitoring; and

(2) An explanation of the significance of the results.

b. If the ~~waterworks~~ owner has performed any monitoring for radon which indicates that radon may be present in the finished water, the report shall include:

(1) The results of the monitoring; and

(2) An explanation of the significance of the results.

c. If the ~~waterworks~~ owner has performed additional monitoring that indicates the presence of other contaminants in the finished water, the report should include any results that may indicate a health concern, as determined by the commissioner. Detections above a proposed MCL or health advisory level may indicate possible health concerns. For such contaminants, the report should include:

(1) The results of the monitoring; and

(2) An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

5. Compliance with other regulations.

a. In addition to the requirements of subdivision 3 f of this subsection the report shall note any violation that occurred during the year covered by the report of a requirement listed below.

(1) Monitoring and reporting of compliance data;

(2) Filtration and disinfection prescribed by 12VAC5-590-420. For ~~waterworks~~ owners who have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of such equipment or processes which constitutes a violation, the report shall include the following language as part of the explanation of potential adverse health effects: Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches;

(3) Lead and copper control requirements prescribed by 12VAC5-590-370. For ~~waterworks~~ owners who fail to take one or more of the prescribed actions, the report shall include the applicable language of Appendix O for lead, copper, or both;

(4) Treatment techniques for Acrylamide and Epichlorohydrin prescribed by 12VAC5-590-420 G. For ~~waterworks~~ owners who violate the requirements of that section, the report shall include the relevant language from Appendix O;

(5) Recordkeeping of compliance data;

(6) Special monitoring requirements for unregulated contaminants prescribed by 12VAC5-590-370 B 4 and for sodium;

(7) Violation of the terms of a variance, an exemption, or an administrative or judicial order.

b. The report shall contain:

(1) A clear and readily understandable explanation of the violation;

(2) Any potential adverse health effects; and

(3) The steps the ~~waterworks~~ owner has taken to correct the violation.

6. Variances and exemptions. If a system is operating under the terms of a variance or an exemption issued by the commissioner under 12VAC5-590-140 and 12VAC5-590-150, the report shall contain:

a. An explanation of the reasons for the variance or exemption;

b. The date on which the variance or exemption was issued;

c. A brief status report on the steps the ~~waterworks~~ owner is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and

d. A notice of any opportunity for public input in the review or renewal of the variance or exemption.

7. Additional information.

a. The report shall contain a brief explanation regarding contaminants, which may reasonably be expected to be found in drinking water including bottled water. This explanation shall include the exact language of subdivisions 8 a (1), (2) and (3) of this subsection or the ~~waterworks~~ owner shall use his own comparable language following approval by the commissioner. The report also shall include the exact language of subdivision 8 a (4) of this subsection.

(1) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(2) Contaminants that may be present in source water include: (i) microbial contaminants, such as viruses and

bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife; (ii) inorganic contaminants, such as salts and metals, which can be naturally occurring or result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming; (iii) pesticides and herbicides, which may come from a variety of sources such as agriculture, urban stormwater runoff, and residential uses; (iv) organic chemical contaminants, including synthetic and volatile organic chemicals, which are byproducts of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems; (v) radioactive contaminants, which can be naturally occurring or be the result of oil and gas production and mining activities.

(3) In order to ensure that tap water is safe to drink, EPA prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. FDA regulations establish limits for contaminants in bottled water which must provide the same protection for public health.

(4) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800-426-4791).

b. The report shall include the telephone number of the ~~waterworks~~ owner, operator, or designee of the community waterworks as a source of additional information concerning the report.

c. In communities with a large proportion of non-English speaking residents, as determined by the commissioner, the report shall contain information in the appropriate language or languages regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

d. The report shall include the following information about opportunities for public participation in decisions that may affect the quality of the water. The waterworks owner should consider including the following additional relevant information:

(1) The time and place of regularly scheduled board meetings of the governing body which has authority over the waterworks.

(2) If regularly scheduled board meetings are not held, the name and telephone number of a waterworks representative who has operational or managerial authority over the waterworks.

e. The ~~waterworks~~ owner may include such additional information as he deems necessary for public education consistent with, and not detracting from, the purpose of the report.

D. Additional health information.

1. All reports shall prominently display the following language: Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer who are undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium* and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).

2. Starting February 22, 2002, a waterworks owner who detects arsenic at levels above 0.005 ~~mg/l~~ mg/L, but equal to or below the PMCL of 0.010 ~~mg/l~~ mg/L, shall include in his report the following informational statement about arsenic: While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the cost of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.

In lieu of the statement required in this subdivision, the waterworks owner may include his own educational statement after receiving approval from the commissioner.

A waterworks owner who detects arsenic levels above 0.010 ~~mg/l must~~ mg/L shall include the health effects language contained in Appendix O.

3. ~~A waterworks~~ An owner who detects nitrate at levels above 5 ~~mg/l~~ mg/L, but below the PMCL, shall include in his report the following informational statement about the impacts of nitrate on children: Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider.

In lieu of the statement required in this subdivision, the waterworks owner may include his own educational statement after receiving approval from the commissioner.

4. ~~A waterworks owner who detects lead above the action level in more than 5.0%, and up to and including 10%, of homes sampled shall include the following informational statement about the special impact of lead on children: Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for 30 seconds to two minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline (800-426-4791).~~ If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. [NAME OF UTILITY] is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to two minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline (800-426-4791).

In lieu of the statement required in this subdivision, the ~~waterworks~~ owner may include his own educational statement after receiving approval from the commissioner.

5. Community waterworks owners who detect TTHM above 0.080 ~~mg/l~~ mg/L, but below the PMCL, as an annual average shall include health effects language prescribed by paragraph 73 of Appendix O.

E. Report delivery and recordkeeping.

1. Each community waterworks owner shall mail or otherwise directly deliver one copy of the report to each customer.

2. The ~~waterworks~~ owner shall make a good faith effort that shall be tailored to the consumers who are served by the system but are not bill paying customers, such as renters and workers. This good faith effort shall include at least one, and preferably two or more, of the following methods appropriate to the particular waterworks:

a. Posting the reports on the Internet;

b. Mailing to postal patrons in metropolitan areas;

c. Advertising the availability of the report in the news media;

d. Publication in a local newspaper;

e. Posting in public places such as libraries, community centers, and public buildings;

f. Delivery of multiple copies for distribution by single-biller customers such as apartment buildings or large private employers;

g. Delivery to community organizations.

h. Other methods as approved by the commissioner.

3. No later than July 1 of each year the ~~waterworks~~ owner shall deliver a copy of the report to the ~~appropriate Virginia Department of Health, Environmental Engineering Field Office~~ district engineer, followed within three months by a certification that the report has been distributed to customers and that the information in the report is correct and consistent with the compliance monitoring data previously submitted to the commissioner.

4. No later than July 1 of each year the ~~waterworks~~ owner shall deliver the report to any other agency or clearinghouse specified by the commissioner.

5. Each community waterworks owner shall make the report available to the public upon request.

6. The owner of each community waterworks serving 100,000 or more persons shall post the current year's report to a publicly accessible site on the Internet.

7. Each community waterworks owner shall retain copies of the report for no less than three years.

12VAC5-590-550. Recordkeeping.

All ~~waterworks~~ owners shall retain ~~within~~ at their ~~facilities~~ waterworks or at a convenient location near their ~~facilities~~ waterworks the following records for the minimum time periods specified:

A. ~~Bacteriological~~ Records of microbiological analyses and turbidity analyses -- Five years.

B. Chemical Analyses -- 10 years.

C. Individual filter monitoring required under 12VAC5-590-530 C 1 b (2) -- Three years.

D. Results of Disinfection Profile including raw data and analysis -- Indefinitely.

E. Disinfection Benchmarking including raw data and analysis -- Indefinitely.

F. The following information shall be provided for subsections A and B of this section:

1. Date, place, and time of sampling as well as the name of the person who collected the sample;

2. Identification of sample (e.g., routine, check sample, raw water, other);

3. Date of analysis;

4. Laboratory and/or person responsible for performing analysis;

5. Analytical method/technique used; and

6. Results of the analysis.

G. Original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, commissioner determinations, and any other information required by 12VAC5-590-420 C 1 and 2, D, E, and F; and 12VAC5-590-370 B 6 a, b, and c pertaining to lead and copper. Each waterworks owner shall retain the records required by this section for no fewer than 12 years.

H. Owners shall keep results from the initial round of source water monitoring under 12VAC5-590-420 B 3 a (1) and the second round of source water monitoring under 12VAC5-590-420 B 3 a (2) until three years after bin classification under 12VAC5-590-420 B 3 c (1) for the particular round of monitoring.

I. Owners shall keep any notification to the commissioner that they will not conduct source water monitoring due to meeting the criteria of 12VAC5-590-420 B 3 a (4) for three years.

J. Owners shall keep the results of treatment monitoring associated with microbial toolbox options under 12VAC5-590-420 B 3 d (3) through (7) and with uncovered finished water reservoirs under 12VAC5-590-420 L, as applicable, for three years.

~~H.~~ K. Action taken to correct violations of these regulations -- three years after last action with respect to violation involved.

~~I.~~ L. Copies of reports, summaries, or communications relating to any sanitary surveys performed -- 10 years following inspection.

~~J.~~ M. Variance or exemptions granted (and records related thereto) -- five years following expiration of variance or exemption.

~~K.~~ N. Cross connection control program records -- 10 years.

~~L.~~ O. ~~Systems~~ Owners of waterworks that recycle flow, as stipulated in 12VAC5-590-420 K, ~~must~~ shall collect and retain on file recycle flow information for review and evaluation by the ~~state~~ district engineer beginning June 8, 2004. Information shall include, as a minimum:

1. Copy of the recycle notification submitted to the ~~state~~ district engineer under 12VAC5-590-530 I.

2. List of all recycle flows and the frequency with which they are returned.

3. Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process, in minutes.

4. Typical filter run length and a written summary of how the filter run length is determined.

5. The type of treatment provided for the recycle flow.

6. Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used, average dose, frequency of use, and frequency at which solids are removed, if applicable.

P. Copies of monitoring plans developed pursuant to these regulations shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under paragraph A or B of this section, except as specified elsewhere in these regulations.

~~M.~~ Q. All ~~waterworks~~ owners shall retain the following additional records:

1. Plant operational records.

2. Water well completion reports.

3. As-built engineering plans and specifications of facilities.

4. Shop drawings of major equipment.

5. Records of equipment repair or replacement.

6. Updated map of water distribution system.

7. All accident reports.

APPENDIX O.
REGULATED CONTAMINANTS FOR CONSUMER CONFIDENCE REPORTS AND PUBLIC NOTIFICATION

Key

AL = Action Level
MCL = Maximum Contaminant Level
MCLG = Maximum Contaminant Level Goal
MFL = million fibers per liter
mrem/year = milirems per year (a measure of radiation absorbed by the body)
MRDL = Maximum Residual Disinfectant Level
MRDLG = Maximum Residual Disinfectant Level Goal

NTU = Nephelometric Turbidity Units
pCi/l = picocuries per liter (a measure of radioactivity)
ppb = parts per billion, or micrograms per liter ~~(µg/l)~~ (µg/L)
ppm = parts per million, or milligrams per liter ~~(mg/l)~~ (mg/L)
ppq = parts per quadrillion, or picograms per liter
ppt = parts per trillion, or nanograms per liter
TT = Treatment Technique

Contaminant (units)	Traditional MCL in mg/l	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Microbiological Contaminants						
(1) Total Coliform Bacteria	MCL: (systems that collect 40 or more samples per month) 5% of monthly samples are positive; (systems that collect fewer than 40 samples per month) 1 positive monthly sample			0	Naturally present in the environment	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems
(2) Fecal coliform and E. coli	MCL: a routine sample and a repeat sample are total coliform positive, and one is also fecal coliform of E. coli positive			0	Human and animal fecal waste	Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely-compromised immune systems.

(3) Source water fecal indicators (E. coli, enterococci, coliphage)	TT		TT	0 for E. coli, none for entero-cocci and coli-phage	Human and animal fecal waste	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune system.
(4) Groundwater rule TT violations other than (3) above[1]	TT			TT		Inadequately treated or inadequately protected water may contain disease-causing organisms. These organisms can cause symptoms such as diarrhea, nausea, cramps, and associated headaches.
~~(3)~~ (5) Turbidity	TT	-	TT	n/a	Soil runoff	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
~~(4)~~ (6) Giardia lamblia, viruses, Hetrotrophic plate count, Legionella, Cryptosporidium[1]	TT[5]	-	n/a	0	n/a	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

Radioactive Contaminants						
~~(5)~~ (7) Beta/photon emitters (mrem/yr)	4 mrem/yr	-	4	0	Decay of natural and man-made deposits	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
~~(6)~~ (8) Alpha emitters (pCi/L)	15 pCi/L	-	15	0	Erosion of natural deposits	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
~~(7)~~ (9) Combined radium (pCi/L)	5 pCi/L	-	5	0	Erosion of natural deposits	Some people who drink water containing radium-226 or radium-228 in excess of the MCL over many years may have an increased risk of getting cancer.
~~(8)~~ (10) Uranium (ppb)	30 ~~µg/l~~ µg/L	-	30	0	Erosion of natural deposits	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
Inorganic Contaminants						
~~(9)~~ (11) Antimony (ppb)	0.006	1000	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
~~(10)~~ (12) Arsenic (ppb)	~~.05~~	1000	~~50~~	~~n/a~~	Erosion of natural	Some people who drink

	0.010[2]		10.[2]	0[2]	deposits; Runoff from orchards; Runoff from glass and electronics production wastes	water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
~~(11)~~ (13) Asbestos (MFL)	7 MFL	-	7	7	Decay of asbestos cement water mains; Erosion of natural deposits	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
~~(12)~~ (14) Barium (ppm)	2	-	2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
~~(13)~~ (15) Beryllium (ppb)	0.004	1000	4	4	Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
~~(14)~~ (16) Cadmium (ppb)	0.005	1000	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; Run-off from waste batteries and paints	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
~~(15)~~ (17) Chromium (ppb)	0.1	1000	100	100	Discharge from steel and pulp mills; Erosion of natural deposits	Some people who drink water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

~~(16)~~ (18) Copper (ppm)	AL=1.3	-	AL=1.3	1.3	Corrosion of household plumbing systems; Erosion of natural deposits	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
~~(17)~~ (19) Cyanide (ppb)	0.2	1000	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
~~(18)~~ (20) Fluoride (ppm)	4	-	4	4	Erosion of natural deposits; Water additive which promotes strong teeth; Discharge from fertilizer and aluminum factories	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.

~~(19)~~ (21) Lead (ppb)	AL=0.015	1000	AL=15	0	Corrosion of household plumbing systems; Erosion of natural deposits	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
~~(20)~~ (22) Mercury [inorganic] (ppb)	.002	1000	2	2	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
~~(21)~~ (23) Nitrate (ppm)	10	-	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
~~(22)~~ (24) Nitrite (ppm)	1	-	1	1	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
~~(23)~~ (25) Total Nitrate and Nitrite	10	-	n/a	10	n/a	Infants below the age of six months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

~~(24)~~ (26) Selenium (ppb)	0.05	1000	50	50	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
~~(25)~~ (27) Thallium (ppb)	0.002	1000	2	0.5	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Synthetic Organic Contaminants including Pesticides and Herbicides						
~~(26)~~ (28) 2,4-D (ppb)	0.07	1000	70	70	Runoff from herbicides used on row crops	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
~~(27)~~ (29) 2,4,5-TP [Silvex] (ppb)	0.05	1000	50	50	Residue of banned herbicide	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
~~(28)~~ (30) Acrylamide	TT	-	TT	0	Added to water during sewage/wastewater treatment	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

~~(29)~~ (31) Alachlor (ppb)	0.002	1000	2	0	Runoff from herbicide used on row crops	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
~~(30)~~ (32) Atrazine (ppb)	0.003	1000	3	3	Runoff from herbicide used on row crops	Some people who drink water containing the atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
~~(31)~~ (33) Benzo(a)pyrene[PAH]	0.0002	1,000,000	200	0	Leaching from linings of water storage tanks and distribution lines	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
~~(32)~~ (34) Carbofuran (ppb)	0.04	1000	40	40	Leaching of soil fumigant used on rice and alfalfa	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
~~(33)~~ (35) Chlordane (ppb)	0.002	1000	2	0	Residue of banned termiticide	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
~~(34)~~ (36) Dalapon (ppb)	0.2	1000	200	200	Runoff from herbicide used on rights of way	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

~~(35)~~ (37) Di(2-ethylhexyl) adipate (ppb)	0.4	1000	400	400	Discharge from chemical factories	Some people who drink water containing di(2-ethyhexyl)adipate well in excess of the MCL over many years could experience toxic effects, such as weight loss, liver enlargement or possible reproductive difficulties.
~~(36)~~ (38) Di(2-ethylhexyl)phthalate (ppb)	0.006	1000	6	0	Discharge from rubber and chemical factories	Some people who drink water containing di(2-ethylhexyl)phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
~~(37)~~ (39) Dibromochloropropane (ppt)	0.0002	1,000,000	200	0	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards	Some people who drink water containing DBCP well in excess of the MCL over many years could experience reproductive problems and may have an increased risk of getting cancer.
~~(38)~~ (40) Dinoseb (ppb)	0.007	1000	7	7	Runoff from herbicide used on soybeans and vegetables	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
~~(39)~~ (41) Diquat (ppb)	0.02	1000	20	20	Runoff from herbicide use	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
~~(40)~~ (42) Dioxin [2,3,7,8-TCDD] (ppq)	0.00000003	1,000,000,000	30	0	Emissions from waste incineration and other combustion; Discharge from chemical factories	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

~~(41)~~ (43) Endothall (ppb)	0.1	1000	100	100	Runoff from herbicide use	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
~~(42)~~ (44) Endrin (ppb)	0.002	1000	2	2	Runoff of banned insecticide	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
~~(43)~~ (45) Epichlorohydrin	TT	-	TT	0	Discharge from industrial chemical factories; An impurity of some water treatment chemicals	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
~~(44)~~ (46) Ethylene dibromide (ppt)	0.00005	1,000,000	50	0	Discharge from petroleum refineries	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
~~(45)~~ (47) Glyphosate (ppb)	0.7	1000	700	700	Runoff from herbicide use	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
~~(46)~~ (48) Heptachlor (ppt)	0.0004	1,000,000	400	0	Residue of banned pesticide	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

~~(47)~~ (49) Heptachlor epoxide (ppt)	0.0002	1,000,000	200	0	Breakdown of heptachlor	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
~~(48)~~ (50) Hexachlorobenzene (ppb)	0.001	1000	1	0	Discharge from metal refineries and agricultural chemical factories	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys or adverse reproductive effects, and may have an increased risk of getting cancer.
~~(49)~~ (51) Hexachlorocyclopentadiene (ppb)	0.05	1000	50	50	Discharge from chemical factories	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their stomach or kidneys.
~~(50)~~ (52) Lindane (ppt)	0.0002	1,000,000	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
~~(51)~~ (53) Methoxychlor (ppb)	0.04	1000	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
~~(52)~~ (54) Oxamyl [Vydate] (ppb)	0.2	1000	200	200	Runoff/leaching from insecticide used on apples, potatoes and tomatoes	Some people who drink water containing ethylene oxamyl in excess of the MCL over many years could experience slight nervous system effects.

~~(53)~~ (55) PCBs [Polychlorinated biphenyls] (ppt)	0.0005	1,000,000	500	0	Runoff from landfills; Discharge of waste chemicals	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
~~(54)~~ (56) Pentachlorophenol (ppb)	0.001	1000	1	0	Discharge from wood preserving factories	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
~~(55)~~ (57) Picloram (ppb)	0.5	1000	500	500	Herbicide runoff	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
~~(56)~~ (58) Simazine (ppb)	0.004	1000	4	4	Herbicide runoff	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
~~(57)~~ (59) Toxaphene (ppb)	0.003	1000	3	0	Runoff/leaching from insecticide used on cotton and cattle	Some people who drink water containing toxaphene in excess of the MCL over many years could experience problems with their thyroid, kidneys, or liver and may have an increased risk of getting cancer.

Volatile Organic Contaminants						
~~(58)~~ (60) Benzene (ppb)	0.005	1000	5	0	Discharge from factories; Leaching from gas storage tanks and landfills	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
~~(59)~~ (61) Carbon tetrachloride (ppb)	0.005	1000	5	0	Discharge from chemical plants and other industrial activities	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
~~(60)~~ (62) Chlorobenzene (ppb)	0.1	1000	100	100	Discharge from chemical and agricultural chemical factories	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
~~(61)~~ (63) o-Dichlorobenzene (ppb)	0.6	1000	600	600	Discharge from industrial chemical factories	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or spleen, or changes in their blood.
~~(62)~~ (64) p-Dichlorobenzene (ppb)	0.075	1000	75	75	Discharge from industrial chemical factories	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or circulatory systems.
~~(63)~~ (65) 1,2-Dichloroethane (ppb)	0.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

~~(64)~~ (66) 1,1-Dichloroethylene (ppb)	0.007	1000	7	7	Discharge from industrial chemical factories	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
~~(65)~~ (67) cis-1,2-Dichloroethylene (ppb)	0.07	1000	70	70	Discharge from industrial chemical factories	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
~~(66)~~ (68) trans-1,2-Dichloroethylene (ppb)	0.1	1000	100	100	Discharge from industrial chemical factories	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
~~(67)~~ (69) Dichloromethane (ppb)	0.005	1000	5	0	Discharge from pharmaceutical and chemical factories	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
~~(68)~~ (70) 1,2-Dichloropropane (ppb)	0.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
~~(69)~~ (71) Ethylbenzene (ppb)	0.7	1000	700	700	Discharge from petroleum refineries	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
~~(70)~~ (72) Styrene (ppb)	0.1	1000	100	100	Discharge from rubber and plastic factories; Leaching from landfills	Some people who drink water containing styrene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory system.

~~(71)~~ (73) Tetrachloroethylene (ppb)	0.005	1000	5	0	Discharge from factories and dry cleaners	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
~~(72)~~ (74) 1,2,4-Trichlorobenzene (ppb)	0.07	1000	70	70	Discharge from textile-finishing factories	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
~~(73)~~ (75) 1,1,1,-Trichloroethane (ppb)	0.2	1000	200	200	Discharge from metal degreasing sites and other factories	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
~~(74)~~ (76) 1,1,2-Trichloroethane (ppb)	0.005	1000	5	3	Discharge from industrial chemical factories	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
~~(75)~~ (77) Trichloroethylene (ppb)	0.005	1000	5	0	Discharge from metal degreasing sites and other factories	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
~~(76)~~ (78) Toluene (ppm)	1	-	1	1	Discharge from petroleum factories	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.

~~(77)~~ (79) Vinyl Chloride (ppb)	0.002	1000	2	0	Leaching from PVC piping; Discharge from plastic factories	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
~~(78)~~ (80) Xylenes (ppm)	10	-	10	10	Discharge from petroleum factories; Discharge from chemical factories	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.
Disinfection By-Products, Precursors, and Residuals						
~~(79)~~ (81) TTHMs [total trihalomethanes] (ppb)	~~.10~~ ~~.08~~[3] 0.080	1000	~~100~~ ~~80~~[3] 80	n/a	By-product of drinking water disinfection	Some people who drink water containing trihalomethanes in excess of the MCL over many years could experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.
~~(80)~~ (82) Haloacetic acids (HAA) (ppb)	0.060	1000	60	n/a	By-product of drinking water disinfection	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
~~(81)~~ (83) Bromate (ppb)	0.010	1000	10	0	By-product of drinking water disinfection	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
~~(82)~~ (84) Chloramines (ppm)	MRDL=4	-	MRDL=4	MRDLG=4	Water additive used to control microbes	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.

~~(83)~~ (85) Chlorine (ppb)	MRDL=4	-	MRDL=4	MRDLG=4	Water additive used to control microbes	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
~~(84)~~ (86) Chlorine dioxide (ppb)[4]	MRDL=0.8	1000	MRDL=800	MRDLG=800	Water additive used to control microbes	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.
~~(84a)~~ (86a) Chlorine dioxide, where any two consecutive daily samples taken at the entrance to the distribution system are above the MRDL.[1]	MRDL=0.8			MRDLG=0.8		The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system which delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.

~~(84b)~~ (86b) Chlorine dioxide, where one or more distribution system samples are above the MRDL.[1]	MRDL=0.8			MRDLG=0.8		The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system which delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.
~~(85)~~ (87) Chlorite (ppm)	1	-	1	0.8	By-product of drinking water disinfection	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
~~(86)~~ (88) Total organic carbon (ppm)	TT	-	TT	n/a	Naturally present in the environment	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous systems effects, and may lead to an increased risk of getting cancer.

[1]This information is for public notification purposes only.

[2]These arsenic values are effective January 23, 2006. Until then, the MCL is 0.05 mg/l and there is no MCLG.

~~[3]Compliance with this total trihalomethanes MCL is required beginning December 16, 2001, for systems serving 10,000 or more persons and beginning December 16, 2003, for systems serving fewer than 10,000 persons and systems using only groundwater not under the direct influence of surface water.~~

~~[4]~~ [3]This information is for Consumer Confidence Report purposes only.

[5 4]Violations of the treatment technique requirements for filtration and disinfection that involve turbidity exceedances may use the health effects language for turbidity instead.

VA.R. Doc. No. R09-973; Filed September 8, 2008, 3:17 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130, 12VAC30-50-530; repealing 12VAC30-50-229.1).**

Statutory Authority: §§ 32.1-324 and 32.1-325; Items 325 XX and EEE of the 2003 Acts of Assembly.

Effective Date: December 10, 2008.

Agency Contact: Jeff Nelson, Policy Analyst, Department of Medical Assistance Services, Policy Division, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8857, FAX (804) 786-1680, or email jnelson@dmas.state.va.us.

Summary:

This regulatory action is a response to Items 325 XX and EEE of the 2003 Appropriations Act, which directs DMAS to expand school health services. The additional services under this final regulation include: audiology services, medical evaluation services, personal care services, and transportation. All health services will be strictly tied to the student's Individualized Educational Program (IEP). This final regulation is the last step in a four-year process of negotiation with the federal Medicaid authority, the Centers for Medicare and Medicaid services (CMS).

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.

12VAC30-50-130. Skilled nursing facility services, EPSDT, [school health services] and family planning.

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

5. Community mental health services.

a. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a documented medical need of the child. These services provide crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication; education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate

peer relations, etc.); and individual, group and family psychotherapy.

c. Community-Based Services for Children and Adolescents under 21 (Level A).

(1) Such services shall be a combination of therapeutic services rendered in a residential setting. The residential services will provide structure for daily activities, psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) In addition to the residential services, the child must receive, at least weekly, individual psychotherapy that is provided by a licensed mental health professional.

(3) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

(4) Authorization is required for Medicaid reimbursement.

(5) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(6) Providers must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Education under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10).

(7) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management.

(8) The facility/group home must coordinate services with other providers.

d. Therapeutic Behavioral Services (Level B).

(1) Such services must be therapeutic services rendered in a residential setting that provides structure for daily activities, psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) Authorization is required for Medicaid reimbursement.

(3) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(4) Providers must be licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10).

(5) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management. This service may be provided in a program setting or a community-based group home.

(6) The child must receive, at least weekly, individual psychotherapy and, at least weekly, group psychotherapy that is provided as part of the program.

(7) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:

a. A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children or the Council on Quality and Leadership.

b. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12VAC30-50-100, 12VAC30-50-105, and 12VAC30-60-

25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12VAC30-130-850 et seq.) of this chapter.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with 42 CFR Part 441 Subpart D, as contained in 42 CFR 441.151 (a) and (b) and 441.152 through 441.156. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

7. Hearing aids shall be reimbursed for individuals younger than 21 years of age according to medical necessity when provided by practitioners licensed to engage in the practice of fitting or dealing in hearing aids under the Code of Virginia.

C. School health [~~assistant~~] services.

1. School health assistant services are ~~defined as those services that assist the child with disabilities in self-sufficiency, communications, and mobility skills. Services provided by the assistant are related to the child's physical and behavioral health requirements, including assistance with eating, dressing, hygiene, activities of daily living, bladder and bowel needs, use of adaptive equipment, ambulation and exercise, minor behavioral issues and other remedial services to promote reduction of a child's disabilities. The registered nurse or other DMAS-recognized school health professional supervising the assistant shall provide a written plan describing the assistance needed for the child~~ [repealed effective July 1, 2006].

[~~2. School health assistant services are available only to students who are qualified to receive special education services under, and consistent with, Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.).~~

~~3. No additional prior authorization is required if the school health assistant services are authorized by the current Individualized Education Program (IEP). The IEP team that authorizes these services must include a physician or other licensed practitioner of the healing arts acting within the scope of his practice under state law, to include a speech-language pathologist, occupational therapist, physical therapist, registered nurse, psychiatrist, clinical psychologist, school psychologist limited, school social worker, or audiologist. The child shall have a current order from a physician, physician assistant or nurse practitioner for specialized nursing procedures such as tube feedings, where the assistant may be involved in attending to the child.~~

~~4. The school health assistant shall perform services consistent with the training received. The school health assistant shall not perform services restricted to, or that cannot be delegated by, a licensed registered nurse or other health professional authorized by DMAS to provide school health services. The school health assistant shall not perform any service for which training was not received.~~

~~5. The assistant shall have met standards for school health assistant services as required by the Department of Education and received training for assisting with meeting the health needs of the child. The assistant is to be supervised by a Virginia licensed physician, physician assistant, nurse practitioner, registered nurse, or other DMAS-recognized school health professional acting within the scope of his license under state law.~~

~~6. School health assistant services shall only be billed by school divisions enrolled with DMAS. Services shall be rendered by employees of school divisions or persons under contract to school divisions. Services billed by the school division shall not be duplicative of services the child receives at the school otherwise covered by DMAS.~~

~~7. School health assistant services shall be billed in units, with one unit equaling 15 minutes. The number of units billed is not to exceed the number of units in a day that the child is in the care of the school. While more than one assistant may attend to a child over the course of a school day, the unit for a particular period of the day for the child shall not be billed for the services of more than one assistant.~~

~~8. The school health assistant shall document on a weekly basis the assistance provided to the child, with the dates and times noted, with initials of the assistant and date of entry. Out of the ordinary needs of the child or assistance provided shall be noted. The documentation shall be reviewed by the supervising registered nurse, or other school health professional recognized in these school services regulations, at least every 30 school days, in addition to any other requirements under state law, with the supervising professional noting approval of the services in the documentation with initials and date.~~

~~9. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided. Health professionals authorized by DMAS to deliver school health services shall not provide any service that exceeds the scope of their practice as set forth by the appropriate health professions board or their endorsement by the Board of Education.~~]

[2. School divisions may provide routine well-child screening services under the State Plan. Diagnostic and treatment services that are otherwise covered under early and periodic screening, diagnosis and treatment services,

shall not be covered for school divisions. School divisions to receive reimbursement for the screenings shall be enrolled with DMAS as clinic providers.

a. Children enrolled in managed care organizations shall receive screenings from those organizations. School divisions shall not receive reimbursement for screenings from DMAS for these children.

b. School-based services are listed in a recipient's Individualized Education Program (IEP) and covered under one or more of the service categories described in § 1905(a) of the Social Security Act. These services are necessary to correct or ameliorate defects of physical or mental illnesses or conditions.

3. Service providers shall be licensed under the applicable state practice act or comparable licensing criteria by the Virginia Department of Education, and shall meet applicable qualifications under 42 CFR Part 440. Identification of defects, illnesses or conditions and services necessary to correct or ameliorate them shall be performed by practitioners qualified to make those determinations within their licensed scope of practice, either as a member of the IEP team or by a qualified practitioner outside the IEP team.

a. Service providers shall be employed by the school division or under contract to the school division.

b. Supervision of services by providers recognized in subdivision 4 of this subsection shall occur as allowed under federal regulations and consistent with Virginia law, regulations, and DMAS provider manuals.

c. The services described in subdivision 4 of this subsection shall be delivered by school providers, but may also be available in the community from other providers.

d. Services in this subsection are subject to utilization control as provided under 42 CFR Parts 455 and 456.

e. The IEP shall determine whether or not the services described in subdivision 4 of this subsection are medically necessary and that the treatment prescribed is in accordance with standards of medical practice. Medical necessity is defined as services ordered by IEP providers. The IEP providers are qualified Medicaid providers to make the medical necessity determination in accordance with their scope of practice. The services must be described as to the amount, duration and scope.

4. Covered services include:

a. Physical therapy, occupational therapy and services for individuals with speech, hearing, and language disorders, performed by, or under the direction of, providers who meet the qualifications set forth at 42 CFR 440.110. This coverage includes audiology services;

b. Skilled nursing services are covered under 42 CFR 440.60. These services are to be rendered in accordance to the licensing standards and criteria of the Virginia Board of Nursing. Nursing services are to be provided by licensed registered nurses or licensed practical nurses but may be delegated by licensed registered nurses in accordance with the regulations of the Virginia Board of Nursing, especially the section on delegation of nursing tasks and procedures. the licensed practical nurse is under the supervision of a registered nurse.

(1) The coverage of skilled nursing services shall be of a level of complexity and sophistication (based on assessment, planning, implementation and evaluation) that is consistent with skilled nursing services when performed by a licensed registered nurse or a licensed practical nurse. These skilled nursing services shall include, but not necessarily be limited to dressing changes, maintaining patent airways, medication administration/monitoring and urinary catheterizations.

(2) Skilled nursing services shall be directly and specifically related to an active, written plan of care developed by a registered nurse that is based on a written order from a physician, physician assistant or nurse practitioner for skilled nursing services. This order shall be recertified on an annual basis.

c. Psychiatric and psychological services performed by licensed practitioners within the scope of practice are defined under state law or regulations and covered as physicians' services under 42 CFR 440.50 or medical or other remedial care under 42 CFR 440.60. These outpatient services include individual medical psychotherapy, group medical psychotherapy coverage, and family medical psychotherapy. Psychological and neuropsychological testing are allowed when done for purposes other than educational diagnosis, school admission, evaluation of an individual with mental retardation prior to admission to a nursing facility, or any placement issue. These services are covered in the nonschool settings also. School providers who may render these services when licensed by the state include psychiatrists, licensed clinical psychologists, school psychologists, licensed clinical social workers, professional counselors, psychiatric clinical nurse specialist, marriage and family therapists, and school social workers.

d. Personal care services are covered under 42 CFR 440.167 and performed by persons qualified under this subsection. The personal care assistant is supervised by a DMAS recognized school-based health professional who is acting within the scope of licensure. This practitioner develops a written plan for meeting the needs of the child, which is implemented by the assistant. The assistant must have qualifications comparable to those

for other personal care aides recognized by the Virginia Department of Medical Assistance Services. The assistant performs services such as assisting with toileting, ambulation, and eating. The assistant may serve as an aide on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

e. Medical evaluation services are covered as physicians' services under 42 CFR 440.50 or as medical or other remedial care under 42 CFR 440.60. Persons performing these services shall be licensed physicians, physician assistants, or nurse practitioners. These practitioners shall identify the nature or extent of a child's medical or other health related condition.

f. Transportation is covered as allowed under 42 CFR 431.53 and described at State Plan Attachment 3.1-D. Transportation shall be rendered only by school division personnel or contractors. Transportation is covered for a child who requires transportation on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Transportation shall be listed in the child's IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

g. Assessments are covered as necessary to assess or reassess the need for medical services in a child's IEP and shall be performed by any of the above licensed practitioners within the scope of practice. Assessments and reassessments not tied to medical needs of the child shall not be covered.

5. DMAS will ensure through quality management review that duplication of services will be monitored. School divisions have a responsibility to ensure that if a child is receiving additional therapy outside of the school, that there will be coordination of services to avoid duplication of service.]

~~C.~~ D. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

12VAC30-50-229.1. [~~School health services.~~] (Repealed.)

[~~A. School health services shall require parental consent and shall be defined as those therapy: Special education services, occupational therapy, physical therapy and speech-language pathology services; nursing services,; psychiatric and psychological screenings, and well-child screenings rendered by employees of school divisions that are enrolled with DMAS to serve children who: services; audiology services; and medical evaluation services.~~

~~1. Qualify to receive special education services as described under and consistent with all of the requirements of Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.). Children qualifying~~

~~1. Only children who qualify for special education services pursuant to Part B of the federal Individuals with Disabilities Education Act, as amended, are eligible to receive school health services; such children shall not be restricted in their choice of enrolled providers of medical care services as described in the State Plan for Medical Assistance; or. Services billed to DMAS must be stated in the child's Individualized Education Program.~~

~~2. Qualify to receive routine screening services under the State Plan. Diagnostic and treatment services, that are otherwise covered under early and periodic screening, diagnosis and treatment services, shall not be covered for participating school divisions. Participating school divisions must receive parental consent before conducting screening services.~~

~~2. School health services shall only be billed by school divisions enrolled with DMAS. Services shall be rendered by employees of school divisions or persons under contract to school divisions. Services billed by the school division shall not be duplicative of services the child receives at the school otherwise covered by DMAS.~~

~~B. Occupational therapy, physical therapy and related speech-language pathology services.~~

~~1. The services covered under this subsection shall include occupational therapy, physical therapy, occupational therapy, and speech-language pathology services. All of the requirements, with the exception of the 24 visit limit, prior authorization and physician order requirements of 12VAC30-50-200, 12VAC30-130-10 through 12VAC30-130-40, and 42 CFR 440.110 are applicable to these services shall continue to apply with regard to, but not necessarily limited to, necessary authorizations, documentation requirements, and provider qualifications. Consistent with the child's Individualized Education Program (IEP), 35 therapy visits will be covered per year per discipline without DMAS prior authorization. The service provider shall be either employed by the school division or under contract to the school division. No~~

additional prior authorization is required if the services are authorized by the current Individualized Education Program (IEP). The IEP team that authorizes these services must include a physician or other licensed practitioner of the healing arts acting within the scope of his license under state law. Other licensed practitioners may include an occupational therapist, physical therapist, or speech-language pathologist.

2. Consistent with § 32.1-326.3 of the Code of Virginia, speech-language pathology services must shall be rendered either by:

a. A speech-language pathologist who meets the qualifications under 42 CFR 440.110(c): (i) has a certificate of clinical competence from the American Speech and Language Hearing Association; (ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or (iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

b. A speech-language pathologist with a current license in speech language pathology issued by the Board of Audiology and Speech-Language Pathology;

c. A speech-language pathologist licensed by the Board of Education with an endorsement in speech-language disorders preK-12 and a master's degree in speech-language pathology. These persons also have a license without examination from the Board of Audiology and Speech-Language Pathology; or

d. A speech-language pathologist who does not meet the criteria for subdivisions a, b, or c above and is directly supervised by a speech-language pathologist who meets the criteria of clause a (i) or a (ii) or subdivision b or c above. The speech-language pathologist must be licensed by the Board of Education with an endorsement in speech-language disorders preK-12 but does not hold a master's degree in speech-language pathology. Direct supervision must take place on site at least every 30 calendar days for a minimum of two hours and must be documented accordingly. The speech-language pathologist who meets the criteria for clause a (i) or a (ii) or subdivision b or c above is readily available to offer needed supervision when speech-language services are provided.

3. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided. Health professionals authorized by DMAS to deliver school health services shall not provide any service that exceeds the scope of their practice as set forth by the appropriate health professions board or their endorsement by the Board of Education.

C. Skilled nursing services.

1. These services must be medically necessary skilled nursing services that are required by a child in order to benefit from an educational program, as described under Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.). These services shall be limited to a maximum of 26 units a day of medically necessary services and pursuant to 42 CFR 440.60. Services not deemed to be medically necessary, upon utilization review, shall not be covered. A unit, for the purposes of this school-based health service, shall be defined as 15 minutes of skilled nursing care.

2. No additional prior authorization is required if the services are authorized by the current Individualized Education Program (IEP). The IEP team that authorizes these services must include a physician or other licensed practitioner of the healing arts acting within the scope of his license under state law, including a registered nurse. The child shall have a current order from a physician, physician assistant, or nurse practitioner for specialized nursing procedures such as tube feedings.

2. 3. These services must be performed by a Virginia-licensed registered nurse (RN), or licensed practical nurse (LPN) under the supervision of a licensed RN. The service provider shall be either employed by the school division or under contract to the school division. The skilled nursing services shall be rendered in accordance with the licensing standards and criteria of the Virginia Board of Nursing. Supervision of LPNs shall be provided consistent with the regulatory standards of the Board of Nursing at 18VAC90-20-270.

3. 4. The coverage of skilled nursing services shall be of a level of complexity and sophistication (based on assessment, planning, implementation and evaluation) that is consistent with skilled nursing services when performed by a registered nurse or a licensed practical nurse. These skilled nursing services shall include, but not necessarily be limited to, dressing changes, maintaining patent airways, medication administration/monitoring and urinary catheterizations. Skilled nursing services shall be consistent with the medical necessity criteria in the school services manual.

4. 5. Skilled nursing services shall be directly and specifically related to an active, written plan of care that is. The plan shall be based on a physician's, physician assistant's or nurse practitioner's written order for skilled nursing services when specialized nursing procedures are involved. The registered nurse shall establish, sign, and date the plan of care. The plan of care shall be periodically reviewed by a physician or nurse practitioner after any

needed consultation with skilled nursing staff. The services shall be specific and provide effective treatment for the child's condition in accordance with accepted standards of skilled nursing practice. The plan of care is further described in subdivision 5 of this subsection. Skilled nursing services rendered that exceed the physician's or nurse practitioner's written order for skilled nursing services or plan of care shall not be reimbursed by DMAS. A copy of the plan of care shall be given to the child's Medicaid primary care provider.

5. 6. Documentation of services shall include a written plan of care that identifies the medical condition or conditions to be addressed by skilled nursing services, goals for skilled nursing services, time tables for accomplishing such stated goals, actual skilled nursing services to be delivered and whether the services will be delivered by an RN or LPN. Services that have been delivered and for which reimbursement from Medicaid is to be claimed must be supported with like documentation. Documentation of school-based skilled nursing services shall include the dates and times of services entered by the responsible licensed nurse; the actual nursing services rendered; the identification of the child on each page of the medical record; the current diagnosis and elements of the history and exam that form the basis of the diagnosis; any prescribed drugs that are part of the treatment including the quantities, dosage, and frequency; and notes to indicate progress made by the child, changes to the diagnosis, or treatment and response to treatment. The plan of care is to be part of the child's medical record. Actions related to the skilled nursing services such as notifying parents, calling the physician, or notifying emergency medical services shall also be documented. All documentation shall be signed and dated by the person performing the service. Lengthier skilled nursing services shall have more extensive documentation. The documentation shall be written immediately, or as soon thereafter as possible, after the procedure or treatment was implemented with the date and time specified, unless otherwise instructed in writing by Medicaid. Documentation is further described in the Medicaid school services manual. Skilled nursing services documentation shall otherwise be in accordance with the Virginia Board of Nursing, Department Board of Medicine, Board of Health, and Department Board of Education statutes, regulations, and standards relating to school health. Documentation shall also be in accordance with school division standards.

6. 7. Service limitations. The following general conditions shall apply to reimbursable skilled nursing services in school divisions:

a. Patient must be under the care of a physician, physician assistant, or nurse practitioner who is legally authorized to practice and who is acting within the scope of his license.

b. A recertification by a physician, physician assistant, or nurse practitioner acting within the scope of his license of the skilled specialized nursing services procedures shall be conducted at least once each school year. The recertification statement must be signed and dated by the physician, physician assistant, or nurse practitioner who reviews the plan of care, and may be obtained when the plan of care is reviewed. The physician or nurse practitioner recertification statement must indicate the continuing need for services and should estimate how long rehabilitative skilled or specialized nursing services will be needed.

c. Physician or nurse practitioner orders for nursing services shall be required The plan of care is to be reviewed by a registered nurse at least annually and modified as necessary, with the RN's initials and date of review entered.

d. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided.

e. d. Skilled nursing services are to be terminated when further progress toward the treatment goals are unlikely or when they are not benefiting the child or when the services can be provided by someone other than the skilled nursing professional.

8. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided. Health professionals authorized by DMAS to deliver school health services shall not provide any service that exceeds the scope of their practice as set forth by the appropriate health professions board or their endorsement by the Board of Education.

D. Psychiatric and psychological services.

1. Evaluations and therapy services shall be covered when rendered by individuals who are licensed by the Board of Medicine and practice as psychiatrists or by psychologists licensed by the Board of Psychology as clinical psychologists or by school psychologists-limited licensed by the Board of Psychology. Evaluation and therapy services shall also be covered when rendered by individuals who are endorsed by the Board of Education as school social workers. Services by these practitioners shall be subject to coverage at 12VAC30-50-140-D and 42 CFR 440.60, with the exception of the service limits and

provider qualifications. The service provider shall be either employed by the school division or under contract to the school division. No additional prior authorization is required if the services are authorized by the current Individualized Education Program (IEP). The IEP team that authorizes these services must include a physician or other licensed practitioner of the healing arts acting within the scope of his license under state law, to include a psychiatrist, clinical psychologist, school psychologist-limited, or school social worker.

2. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided. Health professionals authorized by DMAS to deliver school health services shall not provide any service that exceeds the scope of their practice as set forth by the appropriate health professions board or their endorsement by the Board of Education.

E. Audiology services.

1. Audiology services shall be rendered by an audiologist with a current license in audiology issued by the Board of Audiology and Speech Language Pathology and who meets the requirements of 42 CFR 440.110(c).

2. The service provider shall be either employed by the school division or under contract to the school division. Audiology services shall be authorized by the current Individualized Education Program (IEP). No additional prior authorization is necessary. The IEP team that authorizes these services must include a physician or other licensed practitioner of the healing arts acting within the scope of his license under state law to include a licensed audiologist.

3. The audiological assessment shall include testing and/or observation as appropriate for chronological or mental age for one or more of the following areas of functioning:

a. Auditory, acuity (including pure tone air and bone conduction), speech detection, and speech reception threshold;

b. Auditory discrimination in quiet and noise;

c. Impedience audiometry including tympanometry and acoustic reflex;

d. Hearing amplification evaluation; and

e. Central auditory function.

4. Audiological treatment shall include one or more of the following as appropriate:

a. Auditory training;

b. Speech reading; and

c. Aural rehabilitation, including for cochlear implants.

5. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided. Health professionals authorized by DMAS to deliver school health services shall not provide any service that exceeds the scope of their practice as set forth by the appropriate health professions board or their endorsement by the Board of Education.

F. Medical evaluation services.

1. These evaluation services shall be rendered by a physician, physician assistant or nurse practitioner as part of the development and/or review of a child's Individualized Education Program, to identify or determine the nature and extent of a child's medical or other health-related condition.

2. Physicians and physician assistants shall be licensed by the Virginia Board of Medicine and nurse practitioners shall be licensed by the Virginia Board of Medicine and the Virginia Board of Nursing. The service provider shall be either employed by the school division or under contract to the school division.

3. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the child's school medical record as having been rendered shall be deemed not to have been rendered and no payment shall be provided. Health professionals authorized by DMAS to deliver school health services shall not provide any service that exceeds the scope of their practice as set forth by the appropriate health professions board or their endorsement by the Board of Education.

E. Early and periodic screening, diagnosis, and treatment (EPSDT) services. Routine screening services shall be covered for school divisions when rendered by either physicians or nurse practitioners. Diagnostic and treatment services also covered under EPSDT shall not be covered for school divisions. School divisions shall be required to refer children who are identified through health assessment screenings as having potential abnormalities to their primary care physician for further diagnostic and treatment procedures.

F. G. Specific exclusions from school health services. All services encompassing and related to family planning, pregnancy, and abortion services shall be specifically

~~excluded from Medicaid reimbursement if rendered in the school district setting.~~]

Part VII
Transportation

12VAC30-50-530. Methods of providing transportation.

A. DMAS will ensure necessary transportation for recipients to and from providers of covered medical services. DMAS shall cover transportation to covered medical services under the following circumstances:

1. Emergency air, ambulance transportation, and all other modes of transportation [~~except for transportation services provided by school divisions,~~] shall be covered as medical services under 42 CFR 431.53 and any other applicable federal Medicaid regulations. These modes include, but shall not be limited to, nonemergency air travel, nonemergency ground ambulance, stretcher vans, wheelchair vans, common user bus (intra-city and inter-city), volunteer/registered drivers, and taxicabs. DMAS may contract directly with providers of transportation or with brokers of transportation services, or both. DMAS may require that brokers not have a financial interest in transportation providers with whom they contract.

2. Medicaid provided transportation shall only be available when recipients have no other means of transportation available.

3. Recipients shall be furnished transportation services that are the most economical to adequately meet the recipients' medical needs.

4. Ambulances, wheelchair vans, taxicabs, and other modes of transportation must be licensed to provide services in the Commonwealth by the appropriate state or local licensing agency, or both. Volunteer/registered drivers must be licensed to operate a motor vehicle in the Commonwealth and must maintain automobile insurance.

[~~6. Transportation services provided by school divisions.~~

~~a. School transportation services are available only to students who are qualified to receive special education health services under Part B of the federal Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.).~~

~~b. No additional prior authorization is required if the school transportation services are authorized by the current Individualized Education Program (IEP). The IEP team that authorizes these services must meet all the requirements for IEP team composition set forth in 12VAC30-50-229.1.~~

~~c. School division provided transportation shall be covered for children in special education on days when the child receives a medical service billed to DMAS, such as physical therapy. The transportation is to enable the child to receive the covered medical service. Transportation shall involve a trip from home to school and the return trip, or from school (or home) to a DMAS medical provider in the community for a service, such as physical therapy, and the return trip.~~

~~d. Transportation on a "regular" school bus is not billable to DMAS, unless an aide is necessary for the child to ride the bus. If a child requires transportation on a vehicle adapted to serve the needs of the disabled, such as a specially adapted school bus, that transportation may be billed to DMAS. A school division car or other type of vehicle also qualifies which meets the needs of the child when the child cannot ride a school bus. If an aide is necessary for the child to ride the vehicle and this is noted in the child's IEP, then reimbursement shall include the services of the aide assigned to a child. An aide assigned to ride in a vehicle which transports children, where transportation and an aide are noted in the IEP, can also be billed. The services of a single aide can be billed for up to six children.~~

~~e. Vehicles and drivers providing the transportation shall be in compliance with applicable laws and regulations.~~

5. DMAS-covered school transportation is described at 12VAC30-50-130 C. Vehicles and drivers providing the transportation shall be in compliance with applicable laws and regulations.]

B. DMAS will ensure necessary nonemergency transportation for full-benefit, dual eligible recipients to obtain medically necessary, noncovered Medicare Part D prescription drugs.

VA.R. Doc. No. R03-251; Filed October 20, 2008, 9:55 a.m.

Proposed Regulation

Titles of Regulations: **12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination (amending 12VAC30-30-20).**

12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-280, 12VAC30-40-290; adding 12VAC30-40-105).

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (adding 12VAC30-60-200).

12VAC30-80. Methods and Standards for Establishing Payment Rates; other Types of Care (amending 12VAC30-80-30).

12VAC30-110. Eligibility and Appeals (adding 12VAC30-110-1500).

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 5 p.m. on January 9, 2009.

Agency Contact: Jack Quigley, Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1300, FAX (804) 786-1680, or email jack.quigley@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

The 2006 Acts of Assembly, Chapter 3, Item 302 X directed this regulatory action to amend the State Plan for Medical Assistance to implement a Medicaid Buy-In program designed to include cost sharing provisions. At the time of enrollment in the program, the individual must either be a current Medicaid recipient or meet the income, asset and eligibility requirements for the Medicaid-covered group for individuals who are blind or disabled and have incomes that do not exceed 80% of the federal poverty income guidelines.

Purpose: This regulatory action is intended to implement a mandated Medicaid Buy-In program per the requirement of the 2006 Appropriation Act. This new program, called "Medicaid Works," requires the amendment of two regulations addressing Medicaid eligibility. One of the issues faced by Medicaid enrollees with disabilities is that, while many of them have the capacity to be gainfully employed, the extra income they earn could cause them to lose their Medicaid eligibility due to excess income. The Medicaid Works Buy-In program will help protect the health and welfare of these citizens of the Commonwealth by creating an incentive for disabled Medicaid enrollees who desire to be employed to have added income that will not count against their eligibility income limits. This reduces the financial restrictions to which such enrollees may be subject. This Medicaid Buy-In option provides work incentives that encourage people with disabilities to work or increase their level of work and continue to receive their Medicaid benefits for the very necessary medical care that such disabled persons require.

In addition to standard Medicaid services, this proposed regulation also adds Personal Assistance Services (PAS) for those enrollees for who would otherwise qualify for PAS if they were in a DMAS waiver program.

Substance: The Medicaid State Plan sections affected by this regulatory action are Groups Covered and Agencies Responsible for Eligibility Determinations (12VAC30-30) and Eligibility Conditions and Requirements (12VAC30-40). New to this regulatory action with this proposed regulation stage, the agency is adding subsections in Standards Established and Methods Used to Assure High Quality Care (12VAC30-60) and Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80). The state regulations being created by this action are Working Individuals with Disabilities (12VAC30-110-1500).

This new program was implemented through an emergency regulation, which was followed by a proposed regulation that mirrored the emergency stage. Subsequent to the initial filing of the proposed regulation, however, through negotiations with the federal Medicaid oversight authority (the Centers for Medicare and Medicaid Services or CMS), it became clear to DMAS that this package required substantial changes in order to be approved by CMS. To that end, DMAS withdrew the proposed regulation until it obtained final, approved Medicaid Buy-In program language from CMS. In light of the recent CMS approval, DMAS is submitting its amended proposed regulation. This amendment adds a new subsection to the package describing the services available in the Buy-In program (including Personal Assistance Services or PAS), as well as an additional subdivision to an existing DMAS regulation that describes Medicaid provider reimbursement.

Medicaid eligibility is based upon both income and resource limits. Currently, federal Medicaid eligibility rules do not allow disabled persons to earn a significant amount of income because the extra income they could earn, as well as savings accounts funded from earned income, may cause them to lose their Medicaid eligibility. For purposes of continuing Medicaid eligibility, income that is not spent within the month it is earned is counted as a financial resource. Any money placed in IRS-sanctioned retirement accounts, medical savings or reimbursement accounts, independence accounts or education accounts are counted towards an individual’s Medicaid financial resource limit.

This action is intended to complete the implementation of the new Medicaid Buy-In program, called Medicaid Works, required by the 2006 Virginia Acts of Assembly, Chapter 3, Item 302 X. Medicaid Works is a work incentive initiative requiring the amendment of the Medicaid State Plan regarding eligibility. This innovative program, permitted under § 1902(r) (2) of the Social Security Act, is designed to create greater flexibility in establishing Medicaid eligibility for working disabled individuals. The individuals who will be eligible for this program do not comprise a new eligibility group but are within the existing categories for the aged, blind, and disabled persons having incomes at 80% of the federal poverty income level. Because one purpose of the program is to provide incentives for disabled Medicaid recipients to become employed, Medicaid will disregard earned income placed in specialized accounts that enables eligible enrollees to have income above the 80% federal level.

The Medicaid Works Buy-In program will help protect the health and welfare of the citizens of the Commonwealth by creating a work incentive for certain Medicaid enrollees with disabilities, if they desire to be employed, to have added income or resources that will not count against their Medicaid eligibility limits. This reduces the financial restrictions to which these enrollees may be subject, and encourages greater responsibility and self-determination in eligible enrollees.

In addition to the eligibility disregard for earned income, the Medicaid Works Buy-In program incorporates greater financial resource disregards as well. Once an individual is enrolled in the Medicaid Works program, their earned income limits are higher, and any income placed in the approved savings accounts described below are disregarded for eligibility purposes. Disabled persons who participate in Medicaid Works will be allowed to have earned income amounts up to 200% of the federal poverty income level. In addition, the Medicaid Works program adds the Work Incentive account in which enrollees may place a limited earned income amount, which will also be disregarded. Income placed in such accounts may be used for any purposes.

To enroll in Medicaid Works, applicants must first establish a Work Incentive (WIN) account at a bank or other financial institution. One or more WIN accounts must be designated by enrollees and used to deposit all earned income and to keep all resources or savings above $2,000 in order to remain eligible for this Medicaid program. By placing the earned income in the WIN account, enrollees in 2007 can have annual earnings as high as $40,905 and keep resources in the account of up to $27,577. Amounts deposited in the following types of IRS-approved accounts, which are also designated as WIN accounts, will not count against this resource limit and will not affect eligibility for the program. These include retirement accounts, medical savings accounts, medical reimbursement accounts, education accounts and independence accounts.

If an enrollee leaves the Medicaid Works program, any income remaining in the Work Incentive account is disregarded for up to a year following his withdrawal from Medicaid Works. Any income placed in the other IRS-approved accounts described above will continue to be disregarded as long as such individuals remain in the general Medicaid program.

The new changes in this second proposed regulation clarify that once an individual enrolls in the Medicaid Works program, he has access to all regular Medicaid services, including services associated with Early and Periodic Screening, Diagnosis and Treatment (EPSDT), under normal procedures, for those under the age of 21. Currently, Personal Assistant Services (PAS) are only available to individuals enrolled in DMAS Home and Community-Based Care Waiver programs. Under the changes in this new proposed regulation, however, enrollees in Buy-In now have access to PAS if they would qualify for such services in a Waiver.

Issues: The primary advantage of the proposed regulations to the public is to encourage and enable individuals with disabilities to become employed, which may reduce the level or amount of public benefits that the individual would otherwise consume. These workers with disabilities will also become taxpayers and not just consumers of public resources. Potential program participants must meet the eligibility requirements for the existing blind and disabled covered groups (having incomes of less than or equal to 80% of federal poverty income guidelines) so the new Medicaid Buy-In (MBI) program, Medicaid Works, will not add new covered lives and medical expenses to burden the Commonwealth. The regulatory action poses no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. Pursuant to the 2006 Acts of Assembly, Chapter 3 Item 302 X, the proposed regulations permanently implement a Medicaid Buy-In program. The program is called "Medicaid Works" and has already been in effect under emergency regulations.

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

Estimated Economic Impact. The 2006 Acts of Assembly, Chapter 3 Item 302 X, mandated that the Department of Medical Assistance Services (DMAS) implement a Medicaid Buy-In program. Consequently, DMAS established a program called "Medicaid Works" under emergency regulations and has implemented it in practice. The proposed regulatory action will make the emergency regulations permanent.

Medicaid Works program allows disabled Medicaid enrollees to earn and retain income that will not be counted against their eligibility limits.[1] Because the participants in the program must already be a Medicaid recipient, no additional Medicaid enrollment is expected as a result of this proposed change. However, the program is expected to provide incentives to existing disabled Medicaid enrollees for gainful employment. Employment for compensation would undoubtedly improve the financial welfare of the participants. If working contributes to the health of disabled enrollees, we would also expect improvements in participants' health status.

Additionally, however small it may be, implementation of this program should increase per-capita income in the Commonwealth as more income will be generated with the same resources.

Finally, the maintenance of the Medicaid Works program is expected to add somewhat to the administrative costs of DMAS.

Businesses and Entities Affected. These regulations apply to disabled Medicaid enrollees who would like to participate in this program. According to DMAS, approximately 17 individuals are currently enrolled in the program.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. The proposed regulations should have a small but positive effect on employment.

Effects on the Use and Value of Private Property. The proposed regulations are not expected to have any significant effect on the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed regulations should not have any significant cost or other effects on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations are not expected to have any effect on small businesses.

Real Estate Development Costs. The proposed regulations are not expected to have any effect on 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] In 2008, enrollees can have annual earnings as high as $41,665 and keep resources in a designated account up to $29,348.

Agency's Response to the Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Medicaid Buy-In program (12VAC30-30, 12VAC30-40, 12VAC30-60, 12VAC30-80, 12VAC30-110).

Summary:

This regulatory action is intended to implement a mandated Medicaid Buy-In program per the requirement of the 2006 Acts of Assembly, Chapter 3 Item 302 X. This new program, called Medicaid Works, requires the amendment of several subsections of the DMAS regulations in the areas of Medicaid eligibility, new alternative benefit services, and provider reimbursement. The Medicaid Works Buy-In program will help protect the health and welfare of the citizens of the Commonwealth by creating an incentive for disabled Medicaid enrollees who desire to be employed to have added income that will not count against their eligibility income limits. Presently, Medicaid enrollees who have disabilities, but who still have the capacity to be gainfully employed, could lose their Medicaid eligibility due to excess income if they are employed. This change reduces the financial restrictions to which such enrollees may be subject.

12VAC30-30-20. Optional groups other than the medically needy.

The Title IV A agency determines eligibility for Title XIX services.

1. Caretakers and pregnant women who meet the income and resource requirements of AFDC but who do not receive cash assistance.

2. Individuals who would be eligible for AFDC, SSI or an optional state supplement as specified in 42 CFR 435.230, if they were not in a medical institution.

3. A group or groups of individuals who would be eligible for Medicaid under the plan if they were in a NF or an ICF/MR, who but for the provision of home and community-based services under a waiver granted under 42 CFR Part 441, Subpart G would require institutionalization, and who will receive home and community-based services under the waiver. The group or groups covered are listed in the waiver request. This option is effective on the effective date of the state's § 1915(c) waiver under which this group(s) is covered. In the event an existing § 1915(c) waiver is amended to cover this group(s), this option is effective on the effective date of the amendment.

4. Individuals who would be eligible for Medicaid under the plan if they were in a medical institution, who are terminally ill, and who receive hospice care in accordance with a voluntary election described in § 1905(o) of the Act.

5. The state does not cover all individuals who are not described in § 1902(a)(10)(A)(i) of the Act, who meet the income and resource requirements of the AFDC state plan and who are under the age of 21. The state does cover reasonable classifications of these individuals as follows:

a. Individuals for whom public agencies are assuming full or partial financial responsibility and who are:

(1) In foster homes (and are under the age of 21).

(2) In private institutions (and are under the age of 21).

(3) In addition to the group under subdivisions 5 a (1) and (2) of this section, individuals placed in foster homes or private institutions by private nonprofit agencies (and are under the age of 21).

b. Individuals in adoptions subsidized in full or part by a public agency (who are under the age of 21).

c. Individuals in NFs (who are under the age of 21). NF services are provided under this plan.

d. In addition to the group under subdivision 5 c of this section, individuals in ICFs/MR (who are under the age of 21).

6. A child for whom there is in effect a state adoption assistance agreement (other than under Title IV-E of the Act), who, as determined by the state adoption agency, cannot be placed for adoption without medical assistance because the child has special care needs for medical or rehabilitative care, and who before execution of the agreement:

a. Was eligible for Medicaid under the state's approved Medicaid plan; or

b. Would have been eligible for Medicaid if the standards and methodologies of the Title IV-E foster care program were applied rather than the AFDC standards and methodologies.

The state covers individuals under the age of 21.

7. Section 1902(f) states and SSI criteria states without agreements under §§ 1616 and 1634 of the Act.

The following groups of individuals who receive a state supplementary payment under an approved optional state supplementary payment program that meets the following conditions. The supplement is:

a. Based on need and paid in cash on a regular basis.

b. Equal to the difference between the individual's countable income and the income standard used to determine eligibility for the supplement.

c. Available to all individuals in each classification and available on a statewide basis.

d. Paid to one or more of the following classifications of individuals:

(1) Aged individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(2) Blind individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(3) Disabled individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(4) Individuals receiving a state administered optional state supplement that meets the conditions specified in 42 CFR 435.230.

The supplement varies in income standard by political subdivisions according to cost-of-living differences.

The standards for optional state supplementary payments are listed in 12VAC30-40-250.

8. Individuals who are in institutions for at least 30 consecutive days and who are eligible under a special income level. Eligibility begins on the first day of the 30-day period. These individuals meet the income standards specified in 12VAC30-40-220.

The state covers all individuals as described above.

9. Individuals who are 65 years of age or older or who are disabled as determined under § 1614(a)(3) of the Act, whose income does not exceed the income level specified in 12VAC30-40-220 for a family of the same size, and whose resources do not exceed the maximum amount allowed under SSI.

10. Individuals required to enroll in cost-effective employer-based group health plans remain eligible for a minimum enrollment period of one month.

11. Women who have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act in accordance with § 1504 of the Act and need treatment for breast or cervical cancer, including a pre-cancerous condition of the breast or cervix. These women are not otherwise covered under creditable coverage, as defined in § 2701(c) of the Public Health Services Act, are not eligible for Medicaid under any mandatory categorically needy eligibility group, and have not attained age 65.

12. Individuals who may qualify for the Medicaid Buy-In program under § 1902(a)(10)(A)(ii)(XV) of the Social Security Act (Ticket to Work Act), if they meet the requirements for the 80% eligibility group described in 12VAC30-40-220, as well as the requirements described in 12VAC30-40-105 and 12VAC30-110-1500.

12VAC30-40-105 Financial eligibility.

Working Individuals with Disabilities; Basic Coverage Group (Ticket to Work and Work Incentive Improvement Act (TWWIIA)).

The following standards and methods shall be applied in determining financial eligibility:

1. The agency applies the following income and resource standards to applicants of this program:

a. The individual's total countable income shall not exceed 80% of the current federal poverty income guidelines;

b. The individual's total countable assets shall not exceed $2,000.

2. Income methodologies. In determining whether an individual meets the income standard described in subdivision 1 of this section, the agency uses more liberal income methodologies than the SSI program as further described in 12VAC30-40-280.

3. Resource methodologies. The agency uses resource methodologies in addition to any indicated in subdivisions 1 and 2 of this section that are more liberal than those used by the SSI program as described in 12VAC30-40-290.

12VAC30-40-280. More liberal income disregards.

A. For children covered under §§ 1902(a)(10)(A)(i)(III) and 1905(n) of the Social Security Act, the Commonwealth of Virginia will disregard one dollar plus an amount equal to the difference between 100% of the AFDC payment standard for the same family size and 100% of the ~~Federal Poverty Level~~ federal poverty level for the same family size as updated annually in the Federal Register.

B. For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance shall be granted an income exemption consistent with the Act (§§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)). Any interest earned on one interest-bearing savings or investment account per assistance unit not to exceed $5,000, if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency, shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. For purposes of this section, "purposes related to self-sufficiency" shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the Medicaid assistance unit.

C. For the group described in §§ 1902(a)(10)(A)(i)(VII) and 1902(l)(1)(D), income in the amount of the difference between 100% and 133% of the ~~Federal Poverty Level~~ federal poverty level (as revised annually in the Federal Register) is disregarded.

D. For aged, blind, and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of in-kind support and maintenance when determining eligibility. In-kind support and maintenance means food, clothing, or shelter or any combination of these provided to an individual.

E. For all categorically needy and medically needy children covered under the family and children covered groups, (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard all earned income of a child under the age of 19 who is a student.

F. For all categorically needy and medically needy individuals covered under the family and children covered groups (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard the fair market value of all in-kind support and maintenance as income in determining financial eligibility. In-kind support and maintenance means food, clothing or shelter or any combination of these provided to an individual.

G. Working individuals with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act who wish to increase their earnings while maintaining eligibility for Medicaid must establish Work Incentive (WIN) accounts (see 12VAC30-40-290). The Commonwealth shall disregard earned income up to 200% of the federal poverty level for workers with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act. To be eligible for this earned income disregard, the income is subject to the following provisions:

1. Only earnings that are deposited into a Work Incentive (WIN) account can be disregarded for eligibility purposes.

2. All funds deposited and their source will be identified and registered with the department, for which prior approval has been obtained from the department, and for which the owner authorizes regular monitoring and/or

reporting of these earnings and other information deemed necessary by the department for the proper administration of this provision.

3. A spouse's income will not be deemed to the applicant when determining whether or not the individual meets the financial eligibility requirements for eligibility under this section.

12VAC30-40-290. More liberal methods of treating resources under § 1902(r)(2) of the Act: § 1902(f) states.

A. Resources to meet burial expenses. Resources set aside to meet the burial expenses of an applicant/recipient or that individual's spouse are excluded from countable assets. In determining eligibility for benefits for individuals, disregarded from countable resources is an amount not in excess of $3,500 for the individual and an amount not in excess of $3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by:

1. The face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources; and

2. The amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses.

B. Cemetery plots. Cemetery plots are not counted as resources regardless of the number owned.

C. Life rights. Life rights to real property are not counted as a resource. The purchase of a life right in another individual's home is subject to transfer of asset rules. See 12VAC30-40-300.

D. Reasonable effort to sell.

1. For purposes of this section, "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

2. A reasonable effort to sell is considered to have been made:

a. As of the date the property becomes subject to a realtor's listing agreement if:

(1) It is listed at a price at current market value; and

(2) The listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional interest; zoning restrictions; poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions); or

b. When at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient; or

c. When the applicant has personally advertised his property at or below current market value for 90 days by use of a "Sale By Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, or reasonable inquiries with all adjoining landowners or other potential interested purchasers.

3. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:

a. Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced after 12 months to no more than 100% of the tax-assessed value.

b. In the case where at least two realtors have refused to list the property, the recipient must personally try to sell the property by efforts described in subdivision 2 c of this subsection for 12 months.

c. In the case of a recipient who has personally advertised his property for a year without success (the newspaper advertisements and "for sale" sign do not have to be continuous; these efforts must be done for at least 90 days within a 12-month period), the recipient must then:

(1) Subject his property to a realtor's listing agreement at price or below current market value; or

(2) Meet the requirements of subdivision 2 b of this subsection which are that the recipient must try to list the property and at least two realtors refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

4. If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The

proceeds of the sale will be counted as a resource in determining continuing eligibility.

5. Once the applicant has demonstrated that his property is unsaleable by following the procedures in subdivision 2 of this subsection, the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in subdivision 3 of this subsection.

E. Automobiles. Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle or vehicles must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition (update monthly). In the event the vehicle is not listed, the value assessed by the locality for tax purposes may be used. The value of the additional motor vehicles is to be counted in relation to the amount of assets that could be liquidated that may be retained.

F. Life, retirement, and other related types of insurance policies. Life, retirement, and other related types of insurance policies with face values totaling $1,500 or less on any one person 21 years old and over are not considered resources. When the face values of such policies of any one person exceeds $1,500, the cash surrender value of the policies is counted as a resource.

G. Long-term care partnership insurance policy (partnership policy). Resources equal to the amount of benefits paid on the insured's behalf by the long-term care insurer through a Virginia issued long-term care partnership insurance policy shall be disregarded. A long-term care partnership insurance policy shall meet the following requirements:

1. The policy is a qualified long-term care partnership insurance policy as defined in § 7702B(b) of the Internal Revenue Code of 1986.

2. The policy meets the requirements of the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Regulation and Long-Term Care Insurance Model Act as those requirements are set forth in § 1917(b)(5)(A) of the Social Security Act (42 USC § 1396p).

3. The policy was issued no earlier than May 1, 2007.

4. The insured individual was a resident of a partnership state when coverage first became effective under the policy. If the policy is later exchanged for a different long-term care policy, the individual was a resident of a partnership state when coverage under the earliest policy became effective.

5. The policy meets the inflation protection requirements set forth in § 1917(b)(1)(C)(iii)(IV) of the Social Security Act.

6. The Insurance Commissioner requires the issuer of the partnership policy to make regular reports to the federal Secretary of Health and Human Services that include notification of the date benefits provided under the policy were paid and the amount paid, the date the policy terminates, and such other information as the secretary determines may be appropriate to the administration of such partnerships. Such information shall also be made available to the Department of Medical Assistance Services upon request.

7. The state does not impose any requirement affecting the terms or benefits of a partnership policy that the state does not also impose on nonpartnership policies.

8. The policy meets all the requirements of the Bureau of Insurance of the State Corporation Commission described in 14VAC5-200.

H. Reserved.

I. Resource exemption for Aid to Dependent Children categorically and medically needy (the Act §§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)). For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance may have or establish one interest-bearing savings or investment account per assistance unit not to exceed $5,000 if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency. Any funds deposited in the account shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. Any amounts withdrawn and used for purposes related to self-sufficiency shall be exempt. For purposes of this section, purposes related to self-sufficiency shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the medical assistance unit.

J. Disregard of resources. The Commonwealth of Virginia will disregard all resources for qualified children covered under §§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(ii)(VIII), and 1905(n) of the Social Security Act.

K. Household goods and personal effects. The Commonwealth of Virginia will disregard the value of

household goods and personal effects. Household goods are items of personal property customarily found in the home and used in connection with the maintenance, use and occupancy of the premises as a home. Examples of household goods are furniture, appliances, televisions, carpets, cooking and eating utensils and dishes. Personal effects are items of personal property that are worn or carried by an individual or that have an intimate relation to the individual. Examples of personal property include clothing, jewelry, personal care items, prosthetic devices and educational or recreational items such as books, musical instruments, or hobby materials.

L. Determining eligibility based on resources. When determining Medicaid eligibility, an individual shall be eligible in a month if his countable resources were at or below the resource standard on any day of such month.

M. Working individuals with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act who wish to increase their personal resources while maintaining eligibility for Medicaid shall establish Work Incentive (WIN) accounts. The Commonwealth will disregard up to the current annual SSI (Social Security Act, § 1619(b)) threshold amount (as established for Virginia by the Social Security Administration) held in WIN accounts for workers with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act. To be eligible for this resource disregard, WIN accounts are subject to the following provisions:

1. Deposits to this account shall derive solely from the individual's income earned after electing to enroll in the Medicaid Buy-In (MBI) program.

2. The balance of this account shall not exceed the current annual SSI (Social Security Act § 1619(b)) threshold amount (as established for Virginia by the Social Security Administration).

3. This account will be held separate from nonexempt resources in accounts for which prior approval has been obtained from the department, and for which the owner authorizes regular monitoring and reporting including deposits, withdrawals, and other information deemed necessary by the department for the proper administration of this provision.

4. A spouse's resources will not be deemed to the applicant when determining whether or not the individual meets the financial eligibility requirements for eligibility under this section.

5. Resources accumulated in the Work Incentive account shall be disregarded in determining eligibility for aged, blind and disabled Medicaid-covered groups for one year after the individual leaves the Medicaid Buy-In program.

6. In addition, excluded from the resource and asset limit include amounts deposited in the following types of IRS-approved accounts established as WIN accounts: retirement accounts, medical savings accounts, medical reimbursement accounts, education accounts and independence accounts. Assets retained in these WIN accounts shall be disregarded for all future Medicaid eligibility determinations for aged, blind, or disabled Medicaid-covered groups.

12VAC30-60-200. Ticket to Work and Work Incentives Improvement Act (TWWIIA) basic coverage group: alternative benefits for Medicaid Buy-In program.

A. The state elects to provide alternative benefits under § 1937 of the Social Security Act. The alternative benefit package will be available statewide.

B. The population who will be offered opt-in alternative coverage and who will be informed of the available benefit options prior to having the option to voluntarily enroll in an alternative benefit package consists of working individuals with disabilities enrolled pursuant to the Social Security Act, § 1902(a)(10)(A)(ii)(XV) (Ticket to Work and Work Incentives Improvement Act) covered group or who meet the income, resource and eligibility requirements for the § 1902(a)(10)(A)(ii)(XV) covered group.

C. Medicaid Buy-In: program outreach.

1. Future Medicaid Works solicitations will be geared towards individuals who are currently covered in the SSI and blind and disabled 80% federal poverty level groups; the letter will be an invitation to consider going to work, or to increase how much they work, and inform them that they will still be able to keep their Medicaid health care coverage.

2. They will be advised that this is voluntary and will enable them to earn higher income and retain more assets from their earnings. It will also explain that this option includes an alternative benefits package comprised of their regular Medicaid benefits plus personal assistance services for those who need personal assistance and related services in order to live and work in the community. It will be clearly stated that this program is optional. Their local eligibility worker will be able to review the advantages and disadvantages of this option in order to assist individuals in making an informed choice.

3. Current Medicaid Works enrollees will each receive personal communication by mail advising them of the new alternative benefits package and the steps needed in order to access personal assistance services. Should an enrolled individual be dissatisfied with this option or be unable to continue to be employed, their eligibility worker will reevaluate eligibility for other covered groups pursuant to changing the individual back to regular Medicaid coverage and, if necessary, to accessing personal assistance and related services through the existing home- and community-based services waivers.

4. Brochures describing this work incentive opportunity and alternative benefits option shall be prominently displayed and readily available at local departments of social services.

D. Description of Medicaid Buy-In alternative benefit package.

1. The state will offer an alternative benefit package that the secretary determines provides appropriate coverage for the population served.

2. This alternative benefits package includes all federally mandated and optional Medicaid State Plan services, as described and limited in 12VAC30-50, plus personal assistance services (PAS) for enrollees who otherwise meet the standards to receive PAS, defined as follows:

a. "Personal assistance services" or "PAS" means support services provided in home and community settings necessary to maintain or improve an individual's current health status. Personal care services are defined as help with activities of daily living, monitoring of self-administered medications, and the monitoring of health status and physical condition.

b. These services may be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. An additional component of PAS is work-related and postsecondary education personal services. This service will extend the ability of the personal assistance attendant to provide assistance in the workplace.

c. These services include filing, retrieving work materials that are out of reach; providing travel assistance for an individual with a mobility impairment; helping an individual with organizational skills; reading handwritten mail to an individual with a visual impairment; or ensuring that a sign language interpreter is present during staff meetings to accommodate an employee with a hearing impairment.

d. This service is only available to individuals who also require personal assistance services to meet their ADLs. Workplace or school supports are not provided if they are services provided by the Department of Rehabilitative Services, under IDEA, or if they are an employer's responsibility under the Americans with Disabilities Act or § 504 of the Rehabilitation Act.

e. Following an individual's assessment of the need for PAS and development of a plan of care, the individual will decide whether to have PAS through a personal care agency or whether to self direct his care. For individuals who choose consumer-directed care, DMAS will provide for the services of a fiscal agent to perform certain tasks as an agent for the recipient/employer who is receiving consumer-directed services. The fiscal agent will handle certain responsibilities for the individual, including but not limited to, employment taxes.

f. All governmental and private PAS providers are reimbursed according to the same published fee schedule, located on the agency's website at the following address: http://www.dmas.virginia.gov/pr-fee_files.htm. The agency's rates, based upon one-hour increments, were set as of July 1, 2006, and are effective for services on or after said dates. The agency's rates are updated periodically.

E. Wrap-around/additional services.

1. The state assures that wrap-around or additional benefits will be provided for individuals under 19 who are covered under the state plan pursuant to § 1902(a)(10)(A) of the Social Security Act to ensure early and periodic screening, diagnostic and treatment (EPSDT) services are provided when medically necessary.

2. Wraparound benefits must be sufficient so that, in combination with the Medicaid Buy-In package, these individuals receive the full EPSDT benefit, as medically necessary. The wraparound services provided are described in 12VAC30-50-130.

F. Delivery system.

1. The alternative benefit package will be furnished through a combination of the following methods:

a. On a fee-for-service basis consistent with the requirements of § 1902(a) and implementing regulations relating to payment and beneficiary free choice of provider;

b. On a fee-for-service basis consistent with the requirements cited in subdivision 1 a of this subsection, except that it will be operated with a primary care case management system consistent with § 1915(b)(1);

c. Through a managed care entity consistent with applicable managed care requirements;

d. Through premium assistance for benchmark-equivalent in employer-sponsored coverage.

2. Personal assistance services will always be fee-for-service, whereas all other Medicaid-covered services shall be through one of three models: fee-for-service, primary care case management or through managed care organizations.

G. Additional assurances.

1. The state assures that individuals will have access, through the Medicaid Buy-In alternative benefit package, to rural health clinic (RHC) services and federally qualified health center (FQHC) services as defined in subparagraphs (B) and (C) of § 1905(a)(2).

2. The state assures that payment for RHC and FQHC services is made in accordance with the requirements of § 1902(bb) of the Social Security Act.

H. Cost effectiveness of plans: the Medicaid Buy-In alternative benefit package and any additional benefits must be provided in accordance with economy and efficiency principles.

I. Compliance with the law: The state will continue to comply with all other provisions of the Social Security Act in the administration of the state plan under this title.

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

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Dentists' services.

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

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

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

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

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

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

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

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

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

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

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

7. Local health services.

8. Laboratory services (other than inpatient hospital).

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

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

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

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

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

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

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates

under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. This percentage was determined by dividing the total commercial allowed amounts for Type I physicians for at least the top five commercial insurers in CY 2004 by what Medicare would have allowed. The average commercial allowed amount was determined by multiplying the relative value units times the conversion factor for RBRVS procedures and by multiplying the unit cost times anesthesia units for anesthesia procedures for each insurer and practice group with Type I physicians and summing for all insurers and practice groups. The Medicare equivalent amount was determined by multiplying the total commercial relative value units for Type I physicians times the Medicare conversion factor for RBRVS procedures and by multiplying the Medicare unit cost times total commercial anesthesia units for anesthesia procedures for all Type I physicians and summing.

c. Supplemental payments shall be made quarterly.

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

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

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

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

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

(2) Dividing the difference determined in subdivision 17 b (1) for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision (2) of this subdivision 17 b by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 17 b (3), Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12VAC30-80-190 B 2) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

18. Reserved.

19. Personal Assistance Services (PAS) for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the Single State Agency Website.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

12VAC30-110-1500. Working individuals with disabilities; basic coverage group (Ticket to Work and Work Incentive Improvement Act (TWWIIA)).

A. Definitions.

"Eligible person" means someone who is (i) disabled: an applicant is deemed to be disabled for the purposes of program eligibility if he is enrolled in the Supplemental Security Income (SSI) or Social Security Disability Insurance

(SSDI) programs. If the applicant has not had a disability determination through the Social Security Administration, he must have such a determination through the Disability Determination Services program, (ii) employed or can show proof of imminent prospective employment; (iii) between the ages of 16 years and 64 years; (iv) not subject to spending down of excess resources; (v) not an inpatient in an institution of mental disease (IMD), nor an inmate in a public institution that is not medical facility pursuant to the Act § 1902(a)(10)(A)(ii)(XV).

B. Scope/purpose. The purpose of this program shall be to afford persons who are disabled with the opportunity to be employed and retain more of their earned income without risking the loss of their Medicaid coverage of critical health care benefits.

C. In conformance with 12VAC30-30-20, 12VAC30-40-280, 12VAC30-40-290, and 12VAC30-40-105, eligible persons must meet the definition in subsection A of this section to be approved for this program.

D. In conformance with 12VAC30-40-105, working individuals with disabilities must meet these requirements for continuing eligibility pursuant to the Act § 1902(a)(10)(A)(ii)(XV):

1. Continue to meet the disability, age, and employment criteria described in this section. Individuals who, as enrollees, are unable to maintain employment due to illness or unavoidable job loss may remain in the program as unemployed for up to six months;

2. Have enrollee-countable earned income of no more than 200% FPL;

(a) The standard SSI methodology shall be used to determine "countable" income;

(b) The enrollee shall be treated as a "household of one" and spousal income shall be disregarded for ongoing enrollee eligibility;

3. Have resources or assets up to the annual SSI "threshold amount" (Social Security Act, § 1619(b)) as established for Virginia by the Social Security Administration (SSA), if such resources or assets are accumulated solely from enrollee earnings after the individual is enrolled with Medicaid Buy-In under § 1902(a)(10)(A)(ii)(XV).

VA.R. Doc. No. R07-219; Filed October 20, 2008, 4:28 p.m.

TITLE 13. HOUSING

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: **13VAC10-20. Rules and Regulations for Multi-Family Housing Developments (amending 13VAC10-20-40).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Information:

November 25, 2008 - 10 a.m. - Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA

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

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540 or email judson.mckellar@vhda.com.

Summary:

The proposed amendments permit the authority's board to authorize by resolution the executive director to approve and to authorize the issuance of commitments for multifamily mortgage loans without further approval or authorization by resolution of the board, subject to compliance with any procedures and requirements that may be provided in such resolution. Current regulations authorize the board by resolution to adopt procedures that provide for its prior review and consideration of the recommendations of the executive director before the executive director may approve the mortgage loan and authorize the issuance of a commitment. This technical amendment gives the board broader authority to delegate authorization to the executive director to approve multifamily mortgage loans and authorize the issuance of commitments for such loans, subject to such procedures and requirements as the board may impose.

13VAC10-20-40. Application and acceptance for processing.

Application for a mortgage loan 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, together with such documents and additional information as

may be requested by the authority. The applicant shall complete a previous participation certificate, in such form as the executive director shall require, which shall provide information about rental housing projects in which the principal participants (or their affiliates) in the proposed development have previously had any interest or participation, all as more fully specified by the executive director.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, employment opportunities, recreational opportunities, shopping facilities and other factors affecting the site;

2. An evaluation of the ability, experience, financial capacity and predisposition to regulatory compliance of the applicant;

3. A preliminary evaluation of the estimated construction costs and the proposed design and structure of the proposed development;

4. A preliminary review of the estimated operating expenses and proposed rents and a preliminary evaluation of the adequacy of the proposed rents to sustain the proposed development based upon the assumed occupancy rate and estimated construction and financing costs; and

5. A preliminary evaluation of the need for such housing at rentals or prices which persons and families of low and moderate income can afford within the general housing market area to be served by the proposed development.

Based on the authority's review of the applications, previous participation certificates, documents, and any additional information submitted by the applicants or obtained from other sources by the authority in its review of the proposed developments, the executive director shall accept for processing those applications which he determines satisfy the following criteria:

1. The applicant either owns or leases the site of the proposed development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.

2. Subject to further review and evaluation by the authority's staff under 13VAC10-20-50, the estimated construction costs and operating expenses appear to be complete, reasonable and comparable to those of similar developments.

3. Subject to further review and evaluation by the authority's staff under 13VAC10-20-50, the proposed rents appear to be at levels which will: (i) be affordable by the persons and families intended to be assisted by the authority; (ii) permit the successful marketing of the units to such persons and families; and (iii) sustain the operation of the proposed development.

4. The applicant and other principal participants in the proposed development have the experience, ability, financial capacity and predisposition to regulatory compliance necessary to carry out their respective responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development and will fully and properly perform all of their respective duties and obligations relating to the proposed development under law, regulation and the applicable mortgage loan documents of the authority.

5. The proposed development will contribute to the implementation of the policies and programs of the authority in providing decent, safe and sanitary rental housing for low and moderate income persons and families who cannot otherwise afford such housing and will assist in meeting the need for such housing in the market area of the proposed development.

6. It appears that the proposed development and applicant will be able to meet the requirements for feasibility and commitment set forth in 13VAC10-20-50 and that the proposed development will otherwise continue to be processed through initial closing and will be completed and operated, all in compliance with the Act, the documents and contracts executed at initial closing, applicable federal laws, rules and regulations, and the provisions of this chapter and without unreasonable delay, interruptions or expense.

The executive director's determinations with respect to the above criteria shall be based on the documents and information received or obtained by him at that time from any source and are subject to modification or reversal upon his receipt of additional documents or information at a later time. If the executive director determines that the above criteria are satisfied, he will recommend to the board that the application be approved for further processing. If the executive director determines that one or more of the above criteria are not satisfied, he may nevertheless, in his discretion, recommend to the board that the application be approved for further processing and that the mortgage loan and issuance of the commitment therefor be approved and authorized subject to satisfaction of such criteria in such manner and within such time period as he shall deem appropriate. The board shall review and consider the recommendation of the executive director, and if it concurs with such recommendation, it may by resolution approve the application and authorize the

mortgage loan and the issuance of a commitment therefor, subject to the further review in 13VAC10-20-50 and such terms and conditions as the board shall require in such resolution. However, the board may by resolution ~~adopt procedures that provide for its review and consideration of the recommendations of the executive director and that, upon compliance with such procedures,~~ authorize the executive director to approve~~,~~ and to authorize the issuance of commitments for~~,~~ mortgage loans without further approval or authorization by resolution of the board~~. If such procedures are then in effect and if the requirements therein for the authorization of the executive director to approve the mortgage loan and authorize the issuance of a commitment therefor have been satisfied~~, subject to compliance with any procedures and requirements that may be provided in such resolution; and pursuant to and in accordance with such resolution, the executive director may approve and authorize the mortgage loan and the issuance of a commitment therefor without further approval or authorization by the board, subject to the further review in 13VAC10-20-50 and such terms and conditions as the executive director may require.

A resolution authorizing, or a commitment for, a mortgage loan to a for-profit housing sponsor may prescribe the maximum annual rate, if any, at which distributions may be made by such for-profit housing sponsor with respect to the development, expressed as a percentage of such for-profit housing sponsor's equity in such development (such equity being established in accordance with 13VAC10-20-80), which rate, if any, shall not be inconsistent with the provisions of the Act. In connection with the establishment of any such rates, the board or the executive director shall not prescribe differing or discriminatory rates with respect to substantially similar developments. The resolution or commitment shall specify whether any such maximum annual rate of distributions shall be cumulative or noncumulative and shall establish the manner, if any, for adjusting the equity in accordance with 13VAC10-20-80.

The executive director may impose such terms and conditions with respect to acceptance for processing as he shall deem necessary or appropriate. If any proposed development is so accepted for processing, the executive director shall notify the sponsor of such acceptance and of any terms and conditions imposed with respect thereto. If the executive director determines not to recommend approval of the application, he shall so notify the applicant.

VA.R. Doc. No. R09-1661; Filed October 17, 2008, 9:52 a.m.

TITLE 17. LIBRARIES AND CULTURAL RESOURCES

LIBRARY OF VIRGINIA (LIBRARY 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.

Title of Regulation: **17VAC15-10. Guidelines Governing Public Participation (repealing 17VAC15-10-10).**

17VAC15-11. Public Participation Guidelines (adding 17VAC15-11-10 through 17VAC15-11-110).

Statutory Authority: §§ 2.2-4007.02 and 42.1-8 of the Code of Virginia.

Effective Date: December 10, 2008.

Agency Contact: Janice M. Hathcock, Public Relations Coordinator, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-8000, telephone (804) 692-3592, FAX (804) 692-3594, TTY (804) 692-3976, or email jan.hathcock@lva.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 actions; (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

17VAC15-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Library of Virginia (Library 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).

17VAC15-11-20. 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 Library of Virginia (Library 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

17VAC15-11-30. 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.

17VAC15-11-40. 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 17VAC15-11-30, 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 reproposed, 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

17VAC15-11-50. 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 reproposed 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.

17VAC15-11-60. 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.

17VAC15-11-70. 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.

17VAC15-11-80. 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.

17VAC15-11-90. 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.

17VAC15-11-100. 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.

17VAC15-11-110. 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. R09-1462; Filed October 21, 2008, 3:21 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Final Regulation

Title of Regulation: **18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (amending 18VAC10-20-120, 18VAC10-20-140).**

Statutory Authority: §§54.1-201, 54.1-404, and 54.1-416 of the Code of Virginia.

Effective Date: January 1, 2009.

Agency Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape

Architects, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email apelscidla@dpor.virginia.gov.

Summary:

The amendments permit architect license applicants who are applying via examination to begin taking divisions of the Architect Registration Examination (ARE) prior to completing the National Council of Architectural Registration Boards (NCARB) Intern Development Program (IDP). Currently, the board's regulation requires an architect examination applicant to complete the NCARB IDP prior to becoming eligible to take the ARE.

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.

18VAC10-20-120. Experience.

A. The successful completion of the National Council of Architectural Registration Boards (NCARB) Intern Development Program (IDP) shall be required of all applicants for original licensure. IDP training requirements shall be in accordance with NCARB's Handbook for Interns and Architects, [~~2006-2007~~ 2008-2009] Edition.

B. All applicants must have a minimum of 36 months experience/training ~~prior to submitting an application for examination~~. Any experience/training of less than eight consecutive weeks will not be considered in satisfying this requirement.

C. All applicants must have a minimum of 12 months experience/training in architecture as an employee in the office of a licensed architect ~~prior to submitting an application for examination~~. An organization will be considered to be an office of a licensed architect if:

1. The architectural practice of the organization in which the applicant works is under the charge of a person practicing as a principal, where a principal is a licensed architect in charge of an organization's architectural practice either alone or with other licensed architects, and the applicant works under the direct supervision of a licensed architect; and

2. The practice of the organization encompasses the comprehensive practice of architecture, including the categories set forth in the NCARB IDP requirements.

18VAC10-20-140. Examination.

A. All applicants for original licensure in Virginia are required to pass an NCARB-prepared examination ~~after meeting the education and experience/training requirements as provided in this chapter~~. Provided all other requirements are met, a license as an architect will be issued upon passing the NCARB examination.

An applicant shall be admitted to the NCARB-prepared examination prior to completing the experience requirements contained in 18VAC10-20-120 if the applicant is otherwise qualified and provided the applicant is enrolled in the NCARB IDP.

B. The Virginia board is a member board of NCARB and as such is authorized to make available the NCARB-prepared examination.

C. Grading of the examination shall be in accordance with the national grading procedure administered by NCARB. The board shall utilize the scoring procedures recommended by NCARB. Grades for each division of the examination passed on or after January 1, 2006, shall be valid in accordance with the procedure established by NCARB.

D. The NCARB-prepared examination will be offered at least once a year at a time designated by the board.

E. The board may approve transfer credits for parts of the NCARB-prepared examination taken and passed in accordance with national standards.

F. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee. Applicants not properly registered will not be allowed into the examination site.

G. Applicants approved to sit for the examination shall follow NCARB procedures.

H. Examinees will be notified by the board of passing or failing the examination.

I. Should an applicant fail to pass the NCARB-prepared examination within three years after being approved to sit for the examination, the applicant must reapply. If the applicant has not been taking the examination on a continuous basis during the three-year eligibility period, or fails to reapply within six months after the end of the three-year eligibility period, or both, then the applicant shall meet the entry requirements current at the time of reapplication.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

[FORMS (18VAC10-20)

Architect License Application, (Architect Information Sheet) ~~0401LIC~~ 0401LIC (rev. ~~5/16/07~~10/10/08).

Verification of Architect Examination and Licensure Form, ~~0401ELVF~~ 0401EXVER v.1.0 (rev. ~~3/1/02~~ 9/5/08).

Architect Experience Verification Form, ~~0401 EXP~~ 0401EXP v1.0 (rev. ~~3/26/02~~ 9/5/08).

Architect Client Experience Verification Form, ~~0401CEXP~~ 0401CEXP v1.0 (rev. ~~3/1/02~~ 9/5/08).

Architect Degree Verification Form, ~~0401DEG~~ 0401DEG v1.0 (rev. ~~3/1/02~~ 9/5/08).

Architect Reference Form, 0401REF v1.0 (rev. ~~2/23/05~~ 9/5/08).

Architect License Reinstatement Application, ~~0401REI~~ 0401REI v.1.0 (rev. ~~12/1/04~~ 9/5/08).

Architect License Renewal Form, ~~0401REN,~~ 0401REN v1.0 (eff. ~~4/11/05~~ 9/5/08)

Professional Engineer License Application, (Professional Engineer Information Sheet) 0402LIC (rev. ~~2/1/07~~ 9/22/08).

Professional Engineer Reference Form, ~~0402REF~~ 0402REF v.1.0 (rev. ~~3/1/02~~ 9/5/08).

Professional Engineer License Reinstatement Application, ~~0402REI~~ 0402REI v1.1 (rev. ~~12/1/04~~ 9/15/08).

Professional Engineer and Engineer-in-Training Degree Verification Form, ~~04EDEG~~ 0402_20DEG v1.0 (rev. ~~3/1/02~~ 9/5/08).

Professional Engineer and Engineer-in-Training Experience Verification Form, ~~04EEXP~~ 0402_20EXP v1.0 (rev. ~~2/19/04~~ 9/5/08).

Engineer Verification of Examination and Licensure Form, ~~04EELVF~~ 0402_20EXVER v1.0 (rev. ~~3/1/02~~ 9/5/08).

Engineer-in-Training Designation Application, (Engineer-in-Training Information Sheet) ~~0420DES~~ 0420DES v1.0 (rev. ~~2/1/07~~ 9/5/08).

Engineer-in-Training Reference Form, ~~0420REF~~ 0402REF v1.0 (rev. ~~3/1/02~~ 9/5/08).

Course Requirements for Engineering Technology Program, ~~0402CREQ~~ 0402_20CREQ v1.0 (eff. ~~2/19/03~~ 9/5/08).

Professional Engineer License Renewal Form, ~~0402REN,~~ 0402REN v1.0 (eff. ~~4/11/05~~ 9/5/08).

Land Surveyor License Application, (Land Surveyor Information Sheet) 0403LIC (rev. ~~2/1/07~~ 9/17/08).

Land Surveyor License Reinstatement Application, 0403REI (rev. ~~12/1/04~~ 9/17/08).

Land Surveyor B License Application, (Land Surveyor B Information Sheet) 0404LIC (rev. ~~2/1/07~~ 9/17/08).

Land Surveyor B License Reinstatement Application, 0404REI (rev. ~~12/1/04~~ 9/17/08).

Land Surveyor and Surveyor-in-Training Degree Verification Form, ~~04LSDEG~~ 0403_30DEG (rev. ~~2/1/07~~ 9/17/08).

Land Surveyor Verification of Examination and Licensure Form, ~~04LSELVF~~ 0403_30ELV (rev. ~~2/1/~~07 9/17/08).

Land Surveyor & Surveyor-in-Training Experience Verification Form, ~~04LSEXP~~ 0403_30EXP (rev. ~~2/1/07~~ 9/17/08).

Surveyor Photogrammetrist License Application (Surveyor Photogrammetrist Information Sheet), 0408LIC (eff. 9/19/08).

Surveyor Photogrammetrist License Renewal Form, 0408REN (eff. 9/19/08).

"Grandfather" Surveyor Photogrammetrist Reference Form, 0408REF (eff. 9/19/08).

Surveyor Photogrammetrist Experience Verification Form, 0408EXP (eff. 9/19/08).

"Grandfather" Surveyor Photogrammetrist Experience Verification Form, 0408GXP (eff. 9/19/08).

Surveyor Photogrammetrist License Reinstatement Application, 0408REI (eff. 9/19/08).

Surveyor Photogrammetrist Degree Verification Form, 0408DEG (eff. 9/19/08).

Surveyor Photogrammetrist Verification of Examination and Licensure Form, 0408ELVF (eff. 9/19/08).

Surveyor-In-Training Designation Application, (Surveyor-in-Training Information Sheet) 0430DES (rev. ~~2/1/07~~ 9/17/08).

Land Surveyor License Renewal Form, ~~04LSREN,~~ 0403_04REN (eff. ~~4/11/05~~ 9/17/08).

Landscape Architect Certificate Application, (Landscape Architect Information Sheet) 0406CERT (rev. ~~2/1/07~~10/6/08).

Verification of Landscape Architect Examination and ~~Certification~~ Licensure Form, ~~0406ELVF~~ 0406ELV (rev. ~~3/1/02~~ 9/17/08).

Landscape Architect Experience Verification Form for Examination and Comity Applicants, 0406EXP (rev. ~~6/23/05~~ 9/17/08).

Landscape Architect Degree Verification Form, 0406DEG (rev. ~~3/1/02~~ 9/17/08).

Landscape Architect Certificate Reinstatement Application, 0406REI (rev. ~~12/1/04~~ 9/17/08).

Landscape Architect Certificate Renewal Form, 0406REN~~,~~ (eff. ~~4/11/05~~ 9/17/08).

Interior ~~Design~~ Designer Certificate Application, (Interior Designer Information Sheet) 0412CERT (rev. ~~2/1/07~~ 9/17/08).

Verification of Interior Designer Examination and Certification Form, ~~0412ELVF~~ 0412ELV (rev. ~~3/1/02~~ 9/17/08).

Interior Designer Degree Verification Form, ~~0412DEG~~ 0412DEG v1.0 (rev. ~~3/1/02~~ 9/11/08).

Interior Designer Experience Verification Form, ~~0412EXP~~ 0412EXP v1.0 (rev. ~~8/11/05~~ 9/11/08).

Interior Designer Certificate Reinstatement Application, ~~0412REI~~ 0412REI v1.0 (rev. ~~3/1/02~~ 9/11/08).

Interior ~~Design~~ Designer Certificate Renewal Form, ~~0412REN,~~ 0412REN v1.0 (eff. ~~4/11/05~~ 9/11/08).

Professional Corporation Registration Application ~~,~~ (Professional Corporation Information Sheet), 04PCREG (rev. ~~6/2/06~~ 9/25/08).

Professional Corporation Branch Office Registration Application, ~~04BRPC~~ 04BRPCREG (eff. ~~6/7/06~~ 9/25/08).

Business Entity Registration Application ~~,~~ (Business Entity Information Sheet) 04BUSREG, (rev. ~~6/2/06~~ 9/25/08).

Business Entity Branch Office Registration Application, ~~04BRBUS~~ 04BRBUSREG (rev. ~~1/3/07~~ 9/25/08).

Professional Limited Liability Company Registration Application ~~Form,~~ (Professional Limited Liability Company Information Sheet) 04PLCREG (rev. ~~6/2/06~~ 9/25/08).

Professional Limited Liability Company Branch Office Registration Application, ~~04BRPLC~~ 04BRPLCREG (rev. ~~6/7/06~~ 9/25/08).]

[DOCUMENTS INCORPORATED BY REFERENCE (18VAC10-20)

Handbook for Interns and Architects, ~~2006-2007~~ 2008-2009 Edition, National Council of Architectural Registration Boards, 1801 K Street, NW, Suite 1100-K, Washington, DC 20006, www.ncarb.org.]

VA.R. Doc. No. R07-136; Filed October 10, 2008, 2:24 p.m.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

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: **18VAC30-10. Public Participation Guidelines (repealing 18VAC30-10-10 through 18VAC30-10-120).**

18VAC30-11. Public Participation Guidelines (adding 18VAC30-11-10 through 18VAC30-11-110).

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Effective Date: December 10, 2008.

Agency Contact: Lisa R. Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4424, FAX (804) 527-4413, or email lisa.hahn@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 actions; (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

18VAC30-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Audiology and Speech-Language Pathology. 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).

18VAC30-11-20. 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 Audiology and Speech-Language Pathology, 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

18VAC30-11-30. 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.

18VAC30-11-40. 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 18VAC30-11-30, 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 reproposed, 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

18VAC30-11-50. 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 reproposed 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.

18VAC30-11-60. 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.

18VAC30-11-70. 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.

18VAC30-11-80. 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.

18VAC30-11-90. 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.

18VAC30-11-100. 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.

18VAC30-11-110. 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. R09-1467; Filed October 22, 2008, 9:23 a.m.

COMMON INTEREST COMMUNITY BOARD

Emergency Regulation

Title of Regulation: **18VAC48-20. Condominium Regulations (adding 18VAC48-20-10 through 18VAC48-20-730, 18VAC48-20-810).**

Statutory Authority: §§ 54.1-201, 54.1-2349 and 55-79.98 of the Code of Virginia.

Effective Dates: November 13, 2008, through November 12, 2009.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-0362, FAX (804) 367-4297, or email cic@dpor.virginia.gov.

Preamble

This is an emergency situation pursuant to § 2.2-4011 of the Code of Virginia. Chapters 851 and 871 of the Acts of the 2008 General Assembly, which were the result of HB 516 and SB 301 respectively, require regulations to be effective within 280 days of enactment.

The new regulation establishes the requirements for registration of condominium projects by the Common Interest Community Board. The condominium regulations were previously under the purview of the Real Estate Board and this regulatory action transfers the regulations to the Common Interest Community Board. The only substantial change is that references to the Horizontal Property Act have been removed because § 55-79.2 of the Code of Virginia defines "Board" as the Real Estate Board. Therefore, horizontal property

regimes will continue under the purview of the Real Estate Board until such time as this Act is amended.

CHAPTER 20
CONDOMINIUM REGULATIONS

Part I
General

18VAC48-20-10. Purpose.

This chapter governs the exercise of powers granted to and the performance of duties imposed upon the Common Interest Community Board by the Condominium Act (§ 55-79.39 et seq. of the Code of Virginia).

18VAC48-20-20. Definitions.

The definitions provided in § 55-79.41 of the Code of Virginia, as they may be supplemented herein, shall apply to this chapter. The corresponding meanings assigned to certain terms by § 55-79.41 of the Code of Virginia shall be applicable in this chapter.

18VAC48-20-30. Explanation of terms.

Each reference in this chapter to a "declarant," "purchaser" and "unit owner" or to the plural of those terms shall be deemed to refer, as appropriate, to the masculine and the feminine, to the singular and the plural and to natural persons and organizations. The term "declarant" shall refer to any successors to the persons referred to in § 55-79.41 who come to stand in the same relation to the condominium as their predecessors in that they assumed rights reserved for the benefit of a declarant that (i) offers to dispose of his or its interest in a condominium unit not previously disposed of, (ii) reserves or succeeds to any special declarant right, or (iii) applies for registration of the condominium.

18VAC48-20-40. Condominiums located outside of Virginia.

A. In any case involving a condominium located outside of Virginia in which the laws or practices of the jurisdiction in which such condominium is located prevent compliance with a provision of these condominium regulations, the board or its subordinate shall prescribe, by order, a substitute provision to be applicable in such case which is as nearly equivalent to the original provision as is reasonable under the circumstances.

B. The words "declaration," "bylaws," "plats" and "plans," when used in these condominium regulations with reference to a condominium located outside of Virginia, shall refer to documents, portions of documents or combinations thereof, by whatever name denominated, which have a content and function identical or substantially equivalent to the content and function of their Virginia counterparts.

C. The words "recording" or "recordation," when used with reference to condominium instruments of a condominium located outside of Virginia, shall refer to a procedure which, in the jurisdiction in which such condominium is located, causes the condominium instruments to become legally effective.

D. This chapter shall apply to a contract for the disposition of a condominium unit located outside of Virginia only to the extent permissible under the provisions of § 55-79.40 B of the Code of Virginia.

18VAC48-20-50. Condominium advisory committee.

A condominium advisory committee, appointed by the board, may advise the board in the exercise of its powers and the performance of its duties under the Condominium Act (§ 55-79.39 et seq. of the Code of Virginia).

18VAC48-20-60. Property registration administrator.

A property registration administrator, employed and designated as such by the Director of the Department of Professional and Occupational Regulation, shall function as a subordinate of the board within the meaning of § 2.2-4001 of the Code of Virginia for the purpose of carrying out the routine daily operations of the board with respect to condominium regulations, including, without limitation, the entry of any orders provided for in these condominium regulations, the issuance of public reports and the administration of oaths and affirmations in connection with investigations or other proceedings. The administrator shall act as secretary of the condominium advisory committee.

Part II
Application for Registration

18VAC48-20-70. Application for registration.

Application for registration of condominium units shall be filed at the offices of the board. The application shall contain all of the documents and information required by the standard application form.

18VAC48-20-80. Applications not in proper form.

Upon receipt of an application for registration not in proper form, the board shall return the application to the declarant with a statement specifying the deficiencies in its form however, if the board has reason to believe that the application may readily be put into proper form it may retain the application and notify the declarant of the steps that must be taken to put the application in proper form.

18VAC48-20-90. Form of the application; submission of documents.

The board may establish specific guidelines which establish the form for preparation of the application for registration. These guidelines shall set forth reasonable requirements for paper size, binding and organization which assure uniformity in the manner disclosures are made to prospective purchasers.

18VAC48-20-100. Procedure upon receipt of application for registration.

A. Upon receipt of an application for registration and the fee required by § 55-79.89(d) of the Code of Virginia, the board shall issue the notice of filing required by § 55-79.92(a) of the Code of Virginia and shall conduct an inquiry and investigation to determine whether the prerequisites for registration set out in § 55-79.91 of the Code of Virginia and 18VAC48-20-130 of this chapter have been met. In conducting such inquiry and investigation, the board shall take cognizance of any reliable information concerning the declarant or the condominium coming to the board's attention.

B. If any of the prerequisites for registration appear to the board not to have been met, the board may informally advise the declarant of such fact and indicate in detail the nature of the failure to meet the prerequisites.

C. If the document review conducted by the administrator reveals that the prerequisites for registration have not been met, the board shall issue the correction notification required by § 55-79.92(c) of the Code of Virginia.

D. A request for an extension of the 60-day application period shall be in writing and shall be delivered to the board prior to the expiration of the period being extended. The request shall be for an extension of definite duration. The board may grant in writing a request for an extension of the application period and it may limit the extension to a period not longer than is reasonably necessary to permit correction of the application. An additional extension of the application period may be obtained, subject to the conditions applicable to the initial request. A request for an extension of the application period shall be deemed a consent to delay within the meaning of § 55-79.92(a) of the Code of Virginia.

E. If the prerequisites for registration are not met within the application period or a valid extension thereof, the board shall, upon the expiration of such period, enter an order rejecting registration as required by § 55-79.92(c) of the Code of Virginia.

F. The board shall receive and act upon corrections to the application for registration at any time prior to the effective date of an order rejecting registration.

G. At such time as the board affirmatively determines that the prerequisites for registration have been met, the board shall enter an order registering the condominium. The order shall designate the form and content of the public offering statement, substituted disclosure document or prospectus to be used and, in the case of application for registration made pursuant to 18VAC48-20-680 D of this chapter shall provide that previous orders designating the form and content of the public offering statement, substituted disclosure document or prospectus to be used are superseded.

18VAC48-20-110. Application for registration of expandable condominium.

In accordance with the practice contemplated by § 55-79.74(a) of the Code of Virginia, the declarant may register all units for which development rights have been reserved.

18VAC48-20-120. Filing fee.

Each application shall be accompanied by a fee in an amount equal to $35 per unit, except that the initial application fee shall be not less than $1,750 nor more than $3,500, and the fee for any application for registration of additional units shall be not less than $875 nor more than $3,500.

Part III
Registration

18VAC48-20-130. Prerequisites for registration.

The following provisions are prerequisites for registration and are supplementary to the provisions of § 55-79.91 of the Code of Virginia.

1. The declarant shall own or have the right to acquire an estate in the land constituting or to constitute the condominium which is of at least as great a degree and duration as the estate to be conveyed in the condominium units.

2. The condominium instruments must be adequate to bring a condominium into existence upon recordation except that the certification requirements of § 55-79.58 of the Code of Virginia need not be complied with as a prerequisite for registration. This subsection does not apply to condominium instruments that may be recorded after the condominium has been created.

3. The declarant shall have filed with the board evidence of its ability to complete all proposed improvements on the condominium. Such evidence shall consist of the commitment of an institutional lender to advance construction funds to the declarant and, to the extent that any such commitments will not furnish all the necessary funds, other evidence, satisfactory to the board, of the availability to the declarant of necessary funds. A lender's commitment may be subject to such conditions, including registration of the condominium units and presale requirements as are normal for loans of the type and as to which nothing appears to indicate that the conditions will not be complied with or fulfilled. In the case of a condominium located in Virginia, proposed improvements are uncompleted improvements which the declarant is affirmatively and unconditionally obligated to complete under §§ 55-79.58 and 55-79.67(al) of the Code of Virginia and applicable provisions of the condominium instruments or which the declarant would be so obligated to complete, if plats and plans filed with the board in accordance with 18VAC48-20-140 A of this chapter were

recorded. In the case of a condominium located outside of Virginia, "proposed improvements" are all uncompleted improvements which the declarant intends, without condition or limitation, to build or place on the condominium.

4. The current and planned condominium marketing activities of the declarant shall comply with § 18.2-216 of the Code of Virginia, and 18VAC48-20-160, 18VAC48-20-180 and 18VAC48-20-190 of this chapter.

5. The declarant shall have filed with the board: (i) a proposed public offering statement which complies with § 55-79.90(a) of the Code of Virginia and 18VAC48-20-210 through 18VAC48-20-440 and 18VAC48-20-540 through 18VAC48-20-650 of this chapter and, if applicable, § 55-79.94(a) of the Code of Virginia and 18VAC48-20-470 through 18VAC48-20-520 of this chapter (ii) a substituted disclosure document which complies with 18VAC48-20-450 of this chapter; or (iii) a prospectus which complies with 18VAC48-20-460 of this chapter.

18VAC48-20-140. Requirements for plats and plans.

A. Except as provided in subsection C hereof, improvements shall be depicted on plats filed with the application for registration exactly as the declarant has depicted or intends to depict them on the recorded plats and "(NOT YET BEGUN)" and "(NOT YET COMPLETED)" labels shall be used with respect to such improvements exactly as the declarant has used or intends to use them on the recorded plats. Copies of plats and plans as recorded by the declarant shall be filed with the board if such plats and plans are different from those filed with the application for registration.

B. The requirement of § 55-79.58(b) of the Code of Virginia that plans shall show the location and dimensions of the boundaries of each unit shall be deemed satisfied, in the case of units which are identical (within normal constructions tolerances), by depiction of the location and dimensions of the vertical boundaries and horizontal boundaries, if any, of one such unit. The identifying numbers of all units represented by such depiction shall be indicated. Each structure within which any such units are located shall be depicted so as to indicate the exact location of each such unit within the structure.

C. In the case of a condominium located outside Virginia, certain materials may be filed with the application for registration in lieu of plats and plans complying with the provisions of § 55-79.58 of the Code of Virginia. Such materials shall contain, as a minimum, (i) a plat of survey depicting all existing improvements and all improvements which the declarant intends, without condition or limitation to build or place on the condominium and (ii) legally sufficient descriptions of each unit. Any improvements whose completion is subject to conditions or limitations shall be appropriately labeled to indicate that such improvements may not be completed. Unit descriptions may be written or graphic, shall demarcate each unit vertically and, if appropriate, horizontally, and shall indicate each unit's location relative to established points or datum.

D. The plats and plans must bear the form of the certification statement required by § 55-79.58(a) and (b) of the Code of Virginia. However, such certification may appear in a separate document to be recorded with the plats and plans. As stated in 18VAC48-20-130 2 of this chapter, the statement need not be executed prior to recordation.

18VAC48-20-150. Exemption from registration of nonresidential condominiums.

The exemption from registration of condominiums in which all units are restricted to nonresidential use provided in § 55-79.87(a) shall not be deemed to apply to any condominium as to which there is a substantial possibility that a unit therein other than a unit owned by the declarant or the unit owners' association will be used as permanent or temporary living quarters or as a site upon which vehicular or other portable living quarters will be placed and occupied. Residential use for the purposes of these regulations includes transient occupancy.

Part IV
Marketing

18VAC48-20-160. Preregistration offers prohibited.

A. No declarant or individual or entity acting on behalf of the declarant shall offer a condominium unit prior to its registration.

B. No condominium marketing activity shall be deemed an offer unless, by its express terms, it induces, solicits or encourages a prospective purchaser to execute a contract of sale of the condominium unit or lease of a leasehold condominium unit or perform some other act which would create or purport to create a legal or equitable interest in the condominium unit other than a security interest in or a nonbinding reservation of the condominium unit.

18VAC48-20-170. Condominium marketing activities.

Condominium marketing activities shall include every contact for the purpose of promoting disposition of a condominium unit. Such contacts may be personal, by telephone, by mail or by advertisement. A promise, assertion, representation or statement of fact or opinion made in connection with a condominium marketing activity may be oral, written or graphic. With respect to condominiums located outside of Virginia, the application of these regulations is limited to those condominiums for which contracts are executed in Virginia as required by § 55-79.40 B of the Code of Virginia.

18VAC48-20-180. Condominium marketing standards.

A. No promise, assertion, representation or statement of fact or opinion in connection with a condominium marketing activity shall be made which is false, inaccurate or misleading by reason of inclusion of an untrue statement of a material fact or omission of a statement of a material fact relative to the actual or intended characteristics, circumstances or features of the condominium or a condominium unit.

B. No promise, assertion, representation or statement of fact or opinion made in connection with a condominium marketing activity shall indicate that an improvement will be built or placed on the condominium unless the improvement is a proposed improvement within the meaning of 18VAC48-20-130 3 of this chapter; except that, if the condominium is one for which no application for registration has been filed, there shall be no indication that an improvement will be built or placed on the condominium unless the declarant has sufficient financial assets and a bona fide intention to complete the improvement as represented.

C. No promise, assertion, representation or statement of fact or opinion made in connection with a condominium marketing activity and relating to a condominium unit not registered shall, by its express terms, induce, solicit or encourage a prospective purchaser to leave Virginia for the purpose of executing a contract for sale or lease of the condominium unit or performing some other act which would create or purport to create a legal or equitable interest in the condominium unit other than a security interest in or a nonbinding reservation of the condominium unit.

18VAC48-20-190. Offering literature.

A. Offering literature is any written promise, assertion, representation or statement of fact or opinion made in connection with a condominium marketing activity mailed or delivered directly to a specific prospective purchaser, except that information printed in a publication shall not be deemed offering literature solely by virtue of the fact that the publication is mailed or delivered directly to a prospective purchaser.

B. Offering literature mailed or delivered prior to the registration of the condominium which is the subject of the offering literature shall bear a conspicuous legend containing the substance of the following language:

Identification of the condominium has not been registered by the Common Interest Community Board. A condominium unit may be reserved on a nonbinding reservation agreement, but no contract of sale or lease may be entered into prior to registration.

C. Prior to registration a copy of every item of offering literature other than a personal communication shall be filed with the board prior to its use. A personal communication is a communication directed to a particular prospective purchaser which has not been and is not intended to be directed to any other prospective purchaser.

D. The declarant of a condominium shall provide with the application for registration a narrative description of the promotional plan for the condominium.

E. Offering literature or marketing activities violative of the Virginia Fair Housing Law, § 36-96.1 et seq. of the Code of Virginia, and the Virginia Condominium Act, § 55-79.52(c) of the Code of Virginia is prohibited.

F. Offering literature shall indicate that the property being offered is under the condominium form of ownership. The requirement of this subsection is satisfied by including the full name of the condominium in all offering literature.

18VAC48-20-200. Exemption from marketing regulations.

Nothing in 18VAC48-20-160, 18VAC48-20-180 A, B and C, and 18VAC48-20-190 shall apply in the case of a condominium exempted from registration by § 55-79.87 of the Code of Virginia, or condominiums located outside of Virginia for which no contracts are to be signed in Virginia.

Part V
Public Offering Statement

18VAC48-20-210. Scope of public offering statement.

A public offering statement shall make disclosure relative to a single offering and to the entire condominium in which the condominium units being offered are located. Not more than one version of a public offering statement shall be authorized for use or used at any given time with respect to a particular condominium.

18VAC48-20-220. Offering defined.

As used in these condominium regulations, the word "offering" shall refer to the continuing act of the declarant in making condominium units owned by the declarant within a particular condominium available for acquisition by purchasers or, where appropriate, to the aggregate of the condominium units thus made available.

18VAC48-20-230. Preparation of public offering statement.

The public offering statement shall be clear and legible with pages numbered sequentially. A blank cover or a cover bearing identification information only may be used. Except as elsewhere provided, no portion of the public offering statement may be printed in larger, heavier or different color type than the remainder of the public offering statement. The first page of the public offering statement shall be prepared to conform as closely as possible to the specimen appended as Appendix A to this chapter and made a part hereof.

18VAC48-20-240. Nature of information to be included.

A. The provisions of §§ 55-79.90(a) and 55-79.94(a) of the Code of Virginia, and 18VAC48-20-210 through 18VAC48-20-720 of this chapter shall be strictly construed to promote full and accurate disclosure in the public offering statement and, thereby, to protect the interests of purchasers.

B. The requirements for disclosure are not exclusive. In addition to expressly required information, the declarant shall disclose all other available information which may reasonably be expected to affect the decision of the ordinarily prudent purchaser to accept or reject the offer of a condominium unit. The declarant shall disclose any additional information necessary to make the required information not misleading. No information may be presented in such a fashion as to obscure the facts, to encourage a misinterpretation of the facts or otherwise to mislead a purchaser.

C. No information shall be incorporated by reference to an extrinsic source which is not readily available to an ordinary purchaser. Whenever required information is not known or not reasonably available, such fact shall be stated in the public offering statement with a brief explanation. Whenever special circumstances exist which would render required disclosure inaccurate or misleading, the required disclosure shall be modified to accomplish the purpose of the requirement or the disclosure shall be omitted, provided that such modification or omission promotes full and accurate disclosure.

D. Disclosure shall be made of pertinent facts, events, conditions or other states of affairs which the declarant has reason to believe will occur or exist in the future or which the declarant intends to cause to occur or exist in the future. Disclosure relating to future facts, events, conditions or states of affairs shall be limited by the provisions of subsection F hereof.

E. The public offering statement shall be as brief as is consistent with full and accurate disclosure. In no event shall the public offering statement be made so lengthy or detailed as to discourage close examination.

F. Expressions of opinion in the public offering statement shall be deemed inconsistent with full and accurate disclosure unless there is ample foundation in fact for the opinion; provided, however, that this sentence shall not affect in any way the declarant's duty to set forth a projected budget for the condominium's operation.

G. Except for brief excerpts therefrom, the public offering statement shall not incorporate verbatim portions of the condominium instruments or other documents. The purchaser's attention may be directed to pertinent portions of the declaration, bylaws or other documents attached to the public offering statement which are too lengthy to incorporate verbatim.

H. Maps, photographs and drawings may be utilized in the public offering statement, provided that such utilization promotes full and accurate disclosure.

18VAC48-20-250. Readability.

The public offering statement shall be clear and understandable. Determinations as to compliance with the standards of this paragraph are within the exclusive discretion of the board.

18VAC48-20-260. Summary of important considerations.

A. Immediately following the first page and before the table of contents, the public offering statement shall include a summary of important considerations consisting of particularly noteworthy items of disclosure. Certain summary statements are required by subsection D hereof. Other summary statements may be proposed by the declarant or included by order of the board for the purpose of reinforcing the disclosure of significant information not otherwise included in the summary of important considerations. No summary statement shall be included for the sole purpose of enhancing the sales appeal of condominium units.

B. The summary shall be titled as such and shall be introduced by the following statement: "Following are important matters to be considered in acquiring a condominium unit. They are highlights only. The narrative sections should be examined to obtain detailed information." Each summary statement shall include a reference to pertinent portions, if any, of the public offering statement for details respecting the information summarized. Each summary statement, exclusive of any reference to other portions of the public offering statement, shall be limited to not more than three sentences except that the board may, by order, permit or require additional sentences.

C. Whenever the board finds that the significance to purchasers of certain information requires that it be disclosed more conspicuously than by regular presentation in the summary of important considerations, it may provide, by order, that a summary statement of the information shall be underscored, italicized or printed in a larger or heavier or different color type than the remainder of the public offering statement.

D. Summary statements shall be made of the substance of the following facts and circumstances, to the extent that each is applicable. Specific information shall be substituted for the general information indicated by brackets. Appropriate modifications shall be made to reflect facts and circumstances varying from those indicated herein:

1. The condominium will be governed by a unit owners' association. Each unit owner will have a vote on certain decisions of the association and will be bound by all decisions of the association including those with which he disagrees.

2. Certain decisions of the unit owners' association will be made by an executive organ.

3. The expenses of operating the unit owners' association will be paid by the unit owners on the basis of a periodic budget. Each unit owner will pay a periodic assessment. A unit owner cannot reduce the amount of his assessment by refraining from use of the common elements.

4. If a unit owner fails to pay an assessment when due, the unit owners' association will have a lien against his condominium unit. Certain other penalties may be applied.

5. The declarant must pay assessments on unsold condominium units.

6. The declarant, its predecessors or principal officer has undergone a debtor's relief proceeding.

7. The declarant will retain control of the unit owners' association for an initial period.

8. A managing agent will perform the routine operations of the unit owners' association. The managing agent is related to the declarant, director or officer of the unit owners' association.

9. The declarant may rent unsold condominium units. The right of any unit owner to rent his unit is subject to restrictions.

10. The declarant may expand or contract the condominium or convert convertible land or space without the consent of any unit owner.

11. The right of the unit owner to resell his condominium unit is subject to restrictions.

12. The units are restricted to residential use.

13. The unit owner may not alter the structure of his unit or modify the exterior of his unit without the approval of the declarant or unit owners' association.

14. The unit owners' association will obtain certain insurance benefiting the unit owner, but the unit owner should obtain other insurance on his own.

15. The unit owner will pay real estate taxes on his condominium unit.

16. The unit owner's right to bring legal action against the declarant is limited by certain provisions of the purchase contract; specifically the contract requires the unit owner or the association to pay the attorney's fee of the declarant; requires the unit owner to waive trial by jury in any civil action against the declarant.

17. The condominium is (is not) subject to development as a time-share.

18. Marketing and sale of condominium units will be conducted in accordance with the Virginia Fair Housing Law (Code of Virginia § 36-96.1 et seq.) and the Virginia Condominium Act (Code of Virginia § 55-79.52(c)).

18VAC48-20-270. Narrative sections.

The information to be presented in the public offering statement shall be broken down into sections in order to facilitate reading and comprehension. Certain sections are required by 18VAC48-20-280 through 18VAC48-20-430 of this chapter. Supplementary sections may be included whenever necessary to incorporate information which cannot properly be placed within one of the required sections. Supplementary section captions which indicate the nature of the material presented thereunder shall be utilized. The sections may be set out in any order which lends itself to the organized presentation of information. Section captions may be underscored, italicized or printed in larger or heavier or different color type than the remainder of the public offering statement. A table of contents shall be utilized.

18VAC48-20-280. Narrative sections; condominium concept.

The public offering statement shall contain a section captioned "The Condominium Concept." The section shall consist of a brief discussion of the condominium form of ownership. The section shall discuss the distinction among units, common elements and limited common elements, if any, and shall explain ownership of an undivided interest in the common elements. Attention shall be directed to any features of ownership of the condominium units being offered which are different from typical condominium unit ownership.

18VAC48-20-290. Narrative sections; creation of condominium.

The public offering statement shall contain a section captioned "Creation of the Condominium." The section shall briefly explain the manner in which the condominium was or will be created and shall briefly describe each of the condominium instruments, their functions, and the procedure for their amendment. The section shall indicate where each of the condominium instruments or copies thereof may be found. In the case of a condominium located in Virginia or in a jurisdiction having a law similar to § 55-79.96 of the Code of Virginia, the section shall indicate the purchaser will receive copies of the recorded declaration and bylaws, or amendments, as appropriate, within the time provided for in the applicable statute.

18VAC48-20-300. Narrative sections; description of condominium.

A. The public offering statement shall contain a section captioned "Description of the Condominium." The section shall contain a narrative description of the condominium. The description shall include statements of (i) the land area of the condominium; (ii) the number of units in the condominium;

(iii) the number of units in the offering; (iv) the number of units in the condominium planned to be rented; and (v) whether at the time of registration the declarant intends to sell more than 20% of the units to persons who do not intend to occupy the units as their primary residence.

B. If the condominium is contractable, expandable or includes convertible land or space, the section shall contain a brief description of each such feature including the land area and the maximum number of units or maximum number of units per acre which may be added, withdrawn or converted, as the case may be, together with a statement of the declarant's plans for the implementation of each such feature. In the case of a contractable or expandable condominium, the section shall contain the substance of the following statement: "The construction and development of the condominium may be abandoned or altered, at the declarant's option, short of completion and land or buildings originally intended for condominium development may be put to other uses or sold." In the case of a condominium including convertible land, the section shall contain the substance of the following statements: "Until such time as the declarant converts the convertible land into units or limited common elements, the declarant is required by the Virginia Condominium Act to pay for the upkeep of the convertible land. Once the convertible land has been converted, maintenance and other financial responsibilities associated with the land so designated become the responsibility of the unit owners and, therefore, may be reflected in the periodic assessment for the condominium." If the common expense assessments are expected to increase should convertible land be converted, this section shall also disclose an estimate of the approximate percentage by which such assessments are expected to increase by reason of any such conversion.

C. The section shall state whether or not the units are restricted solely to residential use and shall state where this and other use and occupancy restrictions are to be found in the condominium instruments.

18VAC48-20-310. Narrative section; individual units.

The public offering statement shall contain a section captioned "Individual Units." The section shall contain a general description of the various type units being offered, together with the dates on which substantial completion of unfinished units is anticipated. The section shall discuss what restrictions, if any, exist as to changes unit owners may make to the structure or exterior of their units, whether or not said exterior is a portion of the common elements.

18VAC48-20-320. Narrative sections; common elements.

A. The public offering statement shall contain a section captioned "Common Elements." The section shall contain a general description of the common elements.

B. A statement of the anticipated completion dates of unfinished common elements shall be included except that no such statement shall be necessary with respect to common elements which are completed or expected to be substantially complete when the units are completed.

C. With respect to common elements which the declarant intends to build or place on the condominium but which are not expected to be substantially complete when the units are completed, the section shall state: (i) In the case of a condominium located in Virginia, the nature, source and extent of the obligation to complete such common elements which the declarant has incurred or intends to incur upon recordation of the condominium instruments pursuant to §§ 55-79.58(a) and 55-79.67(a)(1) of the Code of Virginia and applicable provisions of the condominium instruments and pursuant to § 55-79.58:1 of the Code of Virginia, the declarant has filed with the Common Interest Community Board a bond to insure completion of improvements to the common elements which the declarant has incurred or intends to incur upon recordation of the condominium instruments; and (ii) in the case of a condominium located outside of Virginia, the nature, source and extent of the obligation to complete such common elements which the declarant has incurred or intends to incur under the law of the jurisdiction in which the condominium is located.

D. The section shall describe any limited common elements which are assigned or which may be assigned and shall indicate the reservation of exclusive use. In the case of limited common elements which may be assigned, the section shall state the manner of such assignment or reassignment.

E. The section shall indicate the availability of vehicular parking spaces including the number of spaces available per unit and restrictions on or charges for the use of spaces.

18VAC48-20-330. Narrative sections; declarant.

A. The public offering statement shall contain a section captioned "The Declarant." The section shall contain a brief history of the declarant with emphasis on its experience in condominium development.

B. The following information shall be stated with regard to persons immediately responsible for the development of the condominium: (i) name; (ii) length of time associated with the declarant; (iii) role in the development of the condominium; and (iv) experience in real estate development. If different from the persons immediately responsible for the development of the condominium, the principal officers of the declarant shall be identified.

C. If the declarant or its parent or predecessor organization has, during the preceding 10 years, been adjudicated a bankrupt or has undergone any proceeding for the relief of debtors, such fact or facts shall be stated. If any of the persons identified pursuant to subsection B hereof has, during the preceding three years, been adjudicated a bankrupt or undergone any proceeding for the relief of debtors, such fact or facts shall be stated.

D. The section shall indicate any final action taken by an administrative agency or civil or criminal court which reflects adversely upon the performance of the declarant as a developer of real estate projects. The section shall also indicate any current or past proceedings brought against the declarant by any condominium unit owners' association or by its executive organ or any managing agent on behalf of such association or which has been certified as a class action on behalf of some or all of the unit owners. For the purposes of the previous sentence with respect to past proceedings, if the ultimate disposition of those proceedings is one which reflects adversely upon the performance of the declarant, that disposition shall be disclosed. The board has the sole discretion to require additional disclosure of any legal proceedings where it finds such disclosure necessary to assure full and accurate disclosure.

18VAC48-20-340. Narrative sections; terms of offering.

A. The public offering statement shall contain a section captioned "Terms of the Offering." The section shall discuss the expenses to be borne by a purchaser in acquiring a condominium unit and present information regarding the settlement of purchase agreements as provided in subsections B through G hereof.

B. The section shall indicate the offering prices for condominium units or a price range for condominium units, if either is established.

C. The section shall set forth the significant terms of any financing offered by or through the declarant to purchasers. Such discussion shall include the substance of the following statement: "Financing is subject to additional terms and conditions stated in the loan commitment or instruments."

D. The section shall discuss in detail any settlement costs which are not normal for residential real estate transactions including, without limitation, any contribution to the initial or working capital of the unit owners' association to be paid by a purchaser at settlement.

E. The section shall discuss any penalties or forfeitures to be incurred by a purchaser upon default in performance of a purchase agreement which are not normal for residential real estate transactions. Penalties or forfeitures to be discussed include, without limitation, the declarant's right to retain sums deposited in connection with a purchase agreement in the event of a refusal by a lending institution to provide financing to a purchaser who has made proper application for same.

F. The section shall discuss the right of the declarant to cancel a purchase agreement upon failure of the declarant to obtain purchase agreements on a given number or percentage of condominium units being offered or upon failure of the declarant to meet other conditions precedent to obtaining necessary financing.

G. The section shall set forth any provisions in the contract which require the unit owner or the association to pay the attorney's fee of the declarant or require the unit owner to waive trial by jury in any civil action against the declarant and the section shall set forth the paragraph or section and page number of the contract where such provision is located.

18VAC48-20-350. Narrative sections; encumbrances.

A. The public offering statement shall contain a section captioned "Encumbrances." The section shall include the significant terms of any encumbrances, easements, liens and matters of title affecting the condominium as provided in subsections B through I hereof.

B. Except to the extent that such encumbrances are required to be satisfied or released by § 55-79.46(a) of the Code of Virginia, or a similar law, the section shall describe every mortgage, deed of trust, other perfected lien or choate mechanics or materialmen's lien affecting all or any portion of the condominium other than those placed on condominium units by their purchasers or owners. Such description shall identify the lender secured or the lienholder shall state the nature and original amount of the obligation secured, shall identify the party having primary responsibility for performance of the obligation secured and shall indicate the practical effect upon unit owners of failure of said party to perform the obligation.

C. Normal easements for utilities, municipal rights-of-way and emergency access shall be described only as such, without reference to ownership, location or other details.

D. Easements reserved to the declarant to facilitate conversion, expansion or sales shall be briefly described.

E. Easements reserved to the declarant or to the unit owners' association or its representatives or agents for access to units shall be briefly described. In the event that access to a unit may be had without notice to the unit owner, such fact shall be stated.

F. Easements across the condominium reserved to the owners or occupants of land located in the vicinity of the condominium including, without limitation, easements for the use of recreational areas shall be briefly described.

G. Covenants, servitudes or other devices which create an actual or potential restriction on the right of any unit owner to use and enjoy his unit or any portion of the common elements other than limited common elements shall be briefly described.

H. Any matter of title which is not otherwise required to be disclosed by the provisions of this section and which has or may have a substantial adverse impact upon units owners' interests in the condominium shall be described. Under normal circumstances, an easement for encroachments and an easement running in favor of unit owners for ingress and egress across the common elements shall be deemed not to

have a substantial adverse impact upon unit owners' interest in the condominium.

I. The section need not include any information required to be disclosed by 18VAC48-20-300 C, 18VAC48-20-310, or 18VAC48-20-360 of this chapter.

18VAC48-20-360. Narrative sections; restrictions on transfer.

The public offering statement shall include a section captioned "Restrictions on Transfer." The section shall describe and explain any rights of first refusal, preemptive rights, limitations on leasing or other restraints on free alienability created by the condominium instruments or the rules and regulations of the unit owners' association and which affect the unit owners' right to resell, lease or otherwise transfer an interest in his condominium unit.

18VAC48-20-370. Narrative sections; unit owners' association.

A. The public offering statement shall contain a section captioned "Unit Owners' Association." The section shall discuss the manner in which the condominium is governed and administered and shall include the information required by subsections B through J hereof.

B. The section shall state in summary fashion the functions of the unit owners' association.

C. The section shall describe the organizational structure of the unit owners' association. Such description shall indicate (i) the existence of or provision for an executive organ, officers and managing agent, if any; (ii) the relationships between such persons or bodies; (iii) the manner of their election or appointment; and (iv) the assignment or delegation of responsibility for the performance of the functions of the unit owners' association.

D. The section shall describe the allocation of voting power among the unit owners.

E. The section shall discuss any retention by the declarant of control over the unit owners' association.

F. The managing agent, if any, shall be identified. If a managing agent is to be employed in the future, the criteria, if any, for selection of the managing agent shall be briefly stated. The section shall indicate any relationship between the managing agent and the declarant or a member of the executive organ or an officer of the unit owners' association. The duration of any management agreement shall be stated.

G. Except to the extent otherwise disclosed in connection with discussion of a management agreement, the significant terms of any lease of recreational areas or similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium shall be stated. The section shall include a brief narrative statement of the effect of each such agreement upon a purchaser.

H. Rules and regulations of the unit owners' association and the authority to promulgate rules and regulations shall be discussed. Particular provisions of the rules and regulations shall not be discussed except as required by other provisions of these condominium regulations. The purchaser's attention shall be directed to the copy of rules and regulations, if any, attached to the public offering statement.

I. Any standing committees established or to be established to perform functions of the unit owners' association shall be discussed. Such committees include, without limitation, architectural control committees and committees having the authority to interpret condominium instruments, rules and regulations or other operative provisions.

J. Unless required to be disclosed by 18VAC48-20-350 E of this chapter any power of the declarant or of the unit owners' association or its representatives or agents to enter units shall be discussed. To the extent each is applicable, the following facts shall be stated: (i) a unit may be entered without notice to the unit owner; (ii) the declarant or the unit owners' association or its representatives or agents are empowered to take actions or perform work in a unit without the consent of the unit owner; and (iii) the unit owner may be required to bear the costs of actions so taken or work so performed.

18VAC48-20-380. Narrative sections; surrounding area.

The public offering statement shall contain a section captioned "Surrounding Area." The section shall briefly describe the zoning of the immediate neighborhood of the condominium. The section may indicate the existence and proximity of community facilities available to unit owners.

18VAC48-20-390. Narrative sections; financial matters.

A. The public offering statement shall contain a section captioned "Financial Matters." The section shall discuss the expenses incident to the ownership of a condominium unit, excluding certain taxes, in the manner provided in subsections B through I hereof.

B. The section shall distinguish, in general terms, the following categories of costs of operation, maintenance, repair and replacement of various portions of the condominium: (i) common expenses apportioned among and assessed to all of the condominium units pursuant to § 55-79.83(c) of the Code of Virginia or similar law or condominium instrument provision (referred to elsewhere in these regulations as "regular common expenses"); (ii) common expenses, if any, apportioned among and assessed to less than all of the condominium units pursuant to § 55-79.83(a) and (b) of the Code of Virginia or similar law or condominium instrument provisions; and (iii) costs borne directly by individual unit owners. The section need not discuss taxes assessed against individual condominium units and payable directly by their owners.

C. A projected budget shall be prepared showing regular common expenses to be assessed for the first year of the condominium's operation or, if different, the latest year for which projections are available; provided, however, that in no event shall the year for which the budget is projected have commenced more than six months prior to the date application for registration is filed. The projected budget shall be attached to the public offering statement as an exhibit and the section shall direct the purchaser's attention thereto. The section shall describe the manner in which the projected budget is established.

D. The section shall describe the manner in which regular common expenses are apportioned among and assessed to the condominium units. The section shall include the substance of the following statement, if applicable: "A unit owner cannot obtain a reduction of the regular common expenses assessed against his unit by refraining from use of any of the common elements."

E. The section shall describe budget provisions for reserves for capital expenditures and for contingencies, if any.

F. The section shall describe provisions for special assessments to be levied in the event that budgeted assessments provide insufficient funds for operation of the unit owners' association.

G. The section shall discuss any common expenses actually planned to be specially assessed pursuant to § 55-79.83(a) and (b) of the Code of Virginia or similar law or condominium instrument provisions.

H. The section shall indicate any fee, rental or other charge to be payable by unit owners other than through common expense assessments to any party for use of the common elements or for use of recreational or parking facilities in the vicinity of the condominium. As an exception to the provisions of this subsection, the section need not discuss any fees provided for in §§ 55-79.84(h) and 55-79.85 of the Code of Virginia, or similar laws or condominium instrument provisions or any costs for certificates for resale.

I. The section shall discuss the effect of failure of a unit owner to pay when due assessments levied against his condominium unit. Such discussion shall indicate provisions for penalties to be applied in the case of overdue assessments and for acceleration of unpaid assessments. The section shall indicate the existence of a lien for unpaid assessments and where applicable the bond conditioned on the payment of assessments filed with the board in accordance with § 55-79.84:1 of the Code of Virginia. The section shall include, to the extent applicable, the substance of the following statement: "The unit owners' association may obtain payment of overdue assessments by foreclosure of the lien resulting in a forced sale of the condominium unit or by suing the unit owner."

18VAC48-20-400. Narrative sections; insurance.

The public offering statement shall contain a section captioned "Insurance." The section shall describe generally the insurance on the condominium to be maintained by the unit owners' association. The section shall state, with respect to such insurance, each of the following circumstances, to the extent applicable: (i) property damage coverage will not insure personal property belonging to unit owners; (ii) property damage coverage will not insure improvements to a unit which increase its value beyond the limits of coverage provided in the unit owners' association's policy, and (iii) liability coverage will not insure against liability arising from an accident or injury occurring within a unit or as a result of the act or negligence of a unit owner. The section shall indicate any conditions imposed by the condominium instruments or rules and regulations to which insurance obtained directly by unit owners will be subject. Such indication may be made by reference to pertinent provisions of the condominium instruments or rules and regulations.

18VAC48-20-410. Narrative sections; taxes.

A. The public offering statement shall contain a section captioned "Taxes." The section shall describe all existing or proposed taxes to be levied against condominium units individually including, without limitation, real property taxes, sewer connection charges and other special assessments.

B. With respect to real property taxes, the section shall state the tax rate currently in effect. The section shall also state a procedure or formula by means of which the taxes may be estimated.

C. With respect to other taxes, the section shall describe each tax in sufficient detail as to indicate the time at which the tax will be levied and the actual or estimated amount to be levied.

18VAC48-20-420. Narrative sections; governmental approval.

The public offering statement shall contain a section captioned "Governmental Approval." The section shall discuss approval of a site plan and issuance of a building permit by appropriate governmental authorities. The section shall also discuss compliance with all zoning ordinances, building codes, housing codes and similar laws affecting the condominium.

18VAC48-20-430. Narrative sections; warranties.

The public offering statement shall contain a section captioned "Warranties." The section shall describe any warranties provided by or through the declarant on the units or the common elements. If any such warranty is different from the warranty provided by § 55-79.79(b) of the Code of Virginia or a similar applicable law, the section shall include the substance of the following statement: "Nothing contained

in the warranty provided by the declarant shall limit the protection afforded by the statutory warranty."

18VAC48-20-440. Documents to be included.

Copies of the following documents shall be attached as exhibits to the public offering statement: (i) the declaration; (ii) the bylaws; (iii) the projected budget; (iv) rules and regulations of the unit owners' association; (v) any management contract; (vi) any lease of recreational areas; and (vii) any similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium. Other pertinent documents may be attached to the public offering statement including, without limitation, a purchase agreement, a certificate of warranty, a warranty limitation agreement and a depiction of unit layouts.

18VAC48-20-450. Documents from other jurisdictions.

A. A substituted disclosure document is a document originally prepared in compliance with the laws of another jurisdiction and modified in accordance with the provisions of this paragraph in order to fulfill the disclosure requirements established for public offering statements by § 55-79.90(a) and, if applicable, § 55-79.94(a) of the Code of Virginia. A substituted disclosure document shall not be employed in the case of a condominium located in Virginia.

B. The substituted disclosure document shall be prepared by deleting from the original disclosure document: (i) references to any governmental agency of another jurisdiction to which application has been made or will be made for registration or related action; (ii) references to the action of such governmental agency relative to the condominium; (iii) statements of the legal effect in another jurisdiction of delivery, failure to deliver, acknowledgement of receipt or related events involving the disclosure document; (iv) the effective date or dates in another jurisdiction of the disclosure document; and (v) all other information which is untrue, inaccurate or misleading with respect to marketing, offers or disposition of condominium units in Virginia.

C. The substituted disclosure document shall incorporate all information not otherwise included which is necessary to effect fully and accurately the disclosures required by §§ 55-79.90(a) and, if applicable, 55-79.94(a) of the Code of Virginia. The substituted disclosure document shall clearly explain any nomenclature which is different from the definitions provided in § 55-79.41of the Code of Virginia or which, for any other reason, may confuse purchasers in Virginia. Any information not required by §§ 55-79.90(a) and 55-79.94(a) of the Code of Virginia may be deleted, provided that such deletion does not render the required information misleading.

D. The first page of the substituted disclosure document shall be prepared to conform as closely as possible to the specimen appended as Appendix A to these regulations and made a part hereof. The three blanks in the first sentence of the third paragraph of the specimen shall be completed by insertion of the following information: (i) the designation by which the original disclosure document is identified in the jurisdiction pursuant to whose laws it was prepared; (ii) the governmental agency of such other jurisdiction with which the original disclosure document is or will be filed; and (iii) the jurisdiction of such filing.

E. No portion of the substituted disclosure document may be underscored, italicized or printed in larger, heavier or different color type than the remainder of the substituted disclosure document, except: (i) as required by subsection D hereof; (ii) as required or permitted in the original disclosure document by the laws of the jurisdiction pursuant to which it was prepared; and (iii) as provided by order of the board in cases in which it finds that the significance to purchasers of certain information requires that such information be disclosed more conspicuously than by regular presentation in the substituted disclosure document.

F. The provisions of §§ 55-79.88(c), 55-79.90, and 55-79.94(a) of the Code of Virginia and 18VAC48-20-210, 18VAC48-20-230, 18VAC48-20-240, 18VAC48-20-250, 18VAC48-20-440 and 18VAC48-20-450 of this chapter shall apply to substituted disclosure documents in the same manner and to the same extent that they apply to public offering statements.

18VAC48-20-460. Condominium securities.

A prospectus used in lieu of a public offering statement shall contain or have attached thereto copies of documents, other than the projected budget required to be attached to a public offering statement by 18VAC48-20-440 of this chapter. Such prospectus shall be deemed to satisfy all of the disclosure requirements of 18VAC48-20-260 through 18VAC48-20-440 and Part VII of this chapter. In the case of a conversion condominium, the prospectus shall have attached thereto, in suitable form, the information required by 18VAC48-20-500, subsections C and D of 18VAC48-20-510 and 18VAC48-20-520 of this chapter to be disclosed in public offering statements for conversion condominiums. The provisions of § 55-79.88(c) of the Code of Virginia shall apply to the delivery of the prospectus in the same manner and to the same extent that they apply to the delivery of a public offering statement.

Part VI
Conversion Condominiums

18VAC48-20-470. Public offering statement for conversion condominium; general instructions.

The public offering statement for a conversion condominium shall conform in all respects to the requirements of 18VAC48-20-210 through 18VAC48-20-460 and Part VII of this chapter. In addition, the public offering statement for a conversion condominium shall (i) contain special disclosures in the narrative sections captioned

"Description of the Condominium," "Terms of the Offering" and "Financial Matters"; and (ii) incorporate narrative sections captioned "Present Condition of the Condominium" and "Replacement Requirements." Provisions for such additional disclosure are set forth in 18VAC48-20-490 through 18VAC48-20-520 of this chapter.

18VAC48-20-480. Public offering statement for conversion condominium; special definitions.

As used in this paragraph and in 18VAC48-20-490 through 18VAC48-20-520 of this chapter:

"Class of physical assets" means two or more physical assets which are substantially alike in function, manufacture, date of construction or installation and history of use and maintenance.

"Expected useful life" means the estimated number of years from the date on which such estimate is made until the date when, because of the effects of time, weather, stress or wear, a physical asset will become incapable of performing its intended function and will have to be replaced.

"Major utility installation" means a utility installation or portion thereof which is a common element or serves more than one unit.

"Physical asset" is a generic term and means either a structural component or a major utility installation.

"Present condition" means condition as of the date of the inspection by means of which condition is determined.

"Replacement cost" means the expenditure which would be necessary to replace a physical asset with an identical or substantially equivalent physical asset as of the date on which replacement cost is determined and includes all costs of removing the physical asset to be replaced, of obtaining its replacement and of erecting or installing the replacement.

"Structural component" means a component constituting any portion of the structure of a unit or common element and in which a defect would reduce the stability or safety of all or a part of the structure below accepted standards or restrict the normal intended use of all or a part of the structure.

"Structural defect" shall have the meaning given in § 55-79.79(b) of the Code of Virginia.

18VAC48-20-490. Description of conversion condominium.

In addition to the information required by 18VAC48-20-300 of this chapter, the section captioned "Description of the Condominium" shall indicate that the condominium is a conversion condominium. The term conversion condominium shall be defined and the particular circumstances which bring the condominium within the definition shall be stated. The nature and inception date of prior occupancy of the property being converted shall be stated.

18VAC48-20-500. Financial matters, conversion condominium.

A. The provisions for capital reserves described in the section captioned "Financial Matters" shall be supplemented by the information set forth in subsections B and C hereof.

B. The section shall state the aggregate replacement cost of all physical assets whose replacement costs will constitute regular common expenses and whose expected useful lives are 10 years or less. For the purposes of this subsection, an expected useful life which is stated as being within a range of years pursuant to 18VAC48-20-520 E of this chapter shall be deemed to be 10 years or less, if the lower limit of such range is 10 years or less. The total common expense assessments per unit which would be necessary in order to accumulate an amount of capital reserves equal to such aggregate replacement cost shall be stated.

C. The section shall state the amount of capital reserves which will be accumulated by the unit owners' association during the period of declarant's control together with any provisions of the condominium instruments specifying the rate at which reserves are to be accumulated thereafter. If any part of the capital reserves will or may be obtained other than through regular common expense assessments, such fact shall be stated.

D. The actual expenditures made over a three-year period on operation, maintenance, repair or other upkeep of the property prior to its conversion to condominium shall be set forth in tabular form as an exhibit immediately preceding or following the budget attached to the public offering statement pursuant to 18VAC48-20-390 C of this chapter. Distinction shall be made between expenditures which would have constituted regular common expenses and expenditures which would have been borne by unit owners individually if the property had been converted to condominium prior to the commencement of the three-year period. To the extent that it is impossible or impracticable to so distinguish the expenditures it shall be assumed that they would have constituted regular common expenses.

Both types of expenditures shall be cumulatively broken down on a per unit basis in the same proportion that common expenses are or will actually be assessed against the condominium units. The three-year period to which this subsection refers shall be the most recent three-year period prior to application for registration during which the property was occupied and for which expenditure information is available. The expenditure information shall indicate the years for which expenditures are stated. If any portion of the property being converted to condominium was not occupied for the full three-year period, expenditure information shall be set forth for the maximum period the property was occupied. The "Financial Matters" section shall direct the purchaser's attention to the expenditure information.

18VAC48-20-510. Present condition of conversion condominium.

A. The section captioned "Present Condition of the Condominium" shall contain a statement of the approximate dates of original construction or installation of all physical assets in the condominium. A single construction or installation date may be stated for all of the physical assets: (i) in the condominium; (ii) within a distinctly identifiable portion of the condominium; or (iii) within a distinctly identifiable category of physical assets. A statement made pursuant to the preceding sentence shall include a separate reference to the construction or installation date of any physical asset within a stated group of physical assets which was constructed or installed significantly earlier than the construction or installation date indicated for the group generally. No statement shall be made that a physical asset or portion thereof has been repaired, altered, improved or replaced subsequent to its construction or installation unless the approximate date, nature and extent of such repair, alteration, improvement or replacement is also stated.

B. Subject to the exceptions provided in subsections D, E and F hereof, the section captioned "Present Condition of the Condominium" shall contain a description of the present condition of all physical assets within the condominium. The description of present condition shall disclose all structural defects and incapacities of major utility installations to perform their intended functions as would be observable, detectable or deducible by means of standard inspection and investigative techniques employed by architects or professional engineers, as the case may be.

C. The section shall indicate the dates of inspection by means of which the described present condition was determined; provided, however, that such inspections shall have been conducted not more than one year prior to the date of filing the application for registration. The section shall identify the party or parties by whom present condition was ascertained and shall indicate the relationship of such party or parties to the declarant.

D. A single statement of the present condition of a class of physical assets shall suffice to disclose the present condition of each physical asset within the class; provided, however, that, unless subsection F hereof applies, such statement shall include a separate reference to the present condition of any physical asset within the class which is significantly different from the present condition indicated for the class generally.

E. The description of present condition may include a statement that all structural components in the condominium or in a distinctly identifiable portion thereof are in sound condition except those for which structural defects are noted.

F. In a case in which there are numerous physical assets within a class of physical assets and inspection of each such physical asset is impracticable, the description of present condition of all the physical assets within the class may be based upon an inspection of a number of them selected at random, provided that the number selected is large enough to yield a reasonably reliable sample and that the total number of physical assets within the class and the number selected are disclosed.

18VAC48-20-520. Replacement requirements in conversion condominium.

A. Subject to the exceptions provided in subsections B and H hereof, the section captioned "Replacement Requirements" shall state the expected useful lives of all physical assets in the condominium. The section shall state that expected useful lives run from the date of the inspection by means of which the expected useful lives were determined. Such inspection date shall be stated.

B. A single statement of the expected useful life of a class of physical assets shall suffice to disclose the expected useful life of each physical asset within the class; provided, however, that such statement shall include a separate reference to the expected useful life of any physical asset within such class which is significantly shorter than the expected useful life indicated for the class generally.

C. An expected useful life may be qualified. A qualified expected useful life is an expected useful life expressly conditioned upon a given use or level of maintenance or other factor affecting longevity. No use, level of maintenance or other factor affecting longevity shall be stated as a qualification unless such use, level of maintenance or factor affecting longevity is normal or reasonably anticipated for the physical asset involved. If appropriate, an expected useful life may be stated as being indefinite, subject to the stated qualification that the physical asset involved must be properly used and maintained. An expected useful life may be stated as being within a range of years, provided that the range is not so broad as to render the statement meaningless. In no event shall the number of years constituting the lower limit of such range be less than two-thirds of the number of years constituting the upper limit.

D. Subject to the exceptions provided in subsections E and H hereof, the section captioned "Replacement Requirements" shall state the replacement costs of all physical assets in the condominium including those whose expected useful lives are stated as being indefinite.

E. A statement of the replacement cost of a representative member of a class of physical assets shall suffice to disclose the replacement cost of each physical asset within the class; provided, however, that such statement shall include a separate reference to the replacement cost of any physical asset within the class which is significantly greater than the replacement cost indicated for the representative member of the class.

F. Distinction shall be made between replacement costs which will be common expenses and replacement costs which will be borne by unit owners individually. The latter type of replacement costs shall be broken down on a per unit basis. The purchaser's attention shall be directed to the "Financial Matters" section for an indication of the amount of the former type or replacement costs.

G. In any case in which the replacement cost of a physical asset may vary depending upon the circumstances surrounding its replacement, the stated replacement cost shall reflect the circumstances under which replacement will most probably be undertaken.

H. A single expected useful life and an aggregate replacement cost may be stated for all of the structural components of a building or structure which have both (i) the same expected useful lives and (ii) replacement costs which will constitute regular common expenses. A statement made pursuant to the preceding sentence shall be accompanied by statements of the expected useful lives and replacement costs, stated on a per unit basis, of all of the structural components of the building or structure whose expected useful lives differ from the general expected useful life or whose replacement costs will be borne by unit owners individually.

18VAC48-20-530. Notice to tenants.

No notice to terminate a tenancy provided for by § 55-79.94(b) of the Code of Virginia shall be given prior to the registration of the condominium unit as to which the tenancy is to be terminated.

Part VII
Time-Share Condominiums

18VAC48-20-540. Public offering statement for time-share condominiums; general instructions.

This Part VII of the Condominium Regulations applies to those property developments in which purchasers are offered both condominium and time-share interests. The developer of a time-share condominium shall prepare one public offering statement which complies with the requirements of this Part VII even though the developer may be required to register under both the Condominium Act (§ 55-79.39 et seq. of the Code of Virginia) and Real Estate Time-Share Act (§ 55-360 et seq. of the Code of Virginia).

The public offering statement for a time-share condominium shall conform in all respects to the requirements of 18VAC48-20-210 and 18VAC48-20-230 through 18VAC48-20-460 of this chapter. In addition, the public offering statement for a time-share condominium shall (i) contain special disclosures in the narrative sections captioned "Condominium Concept," "Description of Condominium," "Declarant," "Terms of Offering," "Encumbrances," "Unit Owners' Association," "Financial Matters," "Insurance," and "Taxes," and (ii) contain a narrative section entitled "Exchange Program."

18VAC48-20-550. Summary of important considerations.

In addition to the information required by 18VAC48-20-260 of this chapter in the case of a time-share program, summary statements shall be made of the substance of the following facts and circumstances. Specific information shall be substituted for the general information indicated by brackets. Appropriate modifications shall be made to reflect facts and circumstances varying from those indicated herein:

1. The time-share program will [will not] be governed by a time-share owners' association.

2. Decisions affecting the time-share project will be made by the developer.

3. Each time-share owner cannot reduce the amount of his assessment by refraining from use of his time-share or the projects' facilities.

4. If a time-share owner fails to pay an assessment when due, the developer may impose certain sanctions or penalties, including the forfeiture of the time-share.

5. The developer, its principals, officers, directors, partners, or trustees have undergone [a debtor's relief proceeding].

6. A managing agent may perform routine operations for the operation, maintenance and upkeep of the time-share project, as determined by the developer. The managing agent is [affiliated with] the [developer, or a director or officer thereof].

7. The developer may rent on a transient basis, unsold time-shares. The right of a time-share use owner to rent his time-share is subject to [restrictions].

8. The right of a time-share owner to resell his time-share is subject to [restrictions].

9. The time-shares are restricted to residential use.

10. The time-share owner may not alter the structure or exterior of the unit in which his time-share is located.

11. The developer will obtain certain insurance benefiting the time-share use owner, but the time-share use owner should obtain additional insurance on his own.

12. The time-share owner may be required to pay applicable taxes imposed on the project similar in scope and design to taxes applicable to hotels, motels or other transient type accommodations.

13. Marketing and sale of time-shares will be conducted in accordance with Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia).

14. A time-share purchaser is required to make certain disclosures to purchasers in the resale of his time-share.

18VAC48-20-560. Condominium concept, time-share condominium.

In addition to the information required by 18VAC48-20-280 of this chapter, this section shall consist of discussion of the time-share form of ownership and shall include a detailed explanation of the type of time-share arrangement employed in the project.

18VAC48-20-570. Description of condominium, time share condominium.

In addition to the information required by 18VAC48-20-300 of this chapter, this section shall consist of a general description of the time-share program, the units, amenities and type of time-shares being made available to purchasers. The section shall include, without limitation, statements indicating:

1. The land area of the time-share project;

2. The number of units in the project;

3. The number of units in the project to be organized on a time-share basis;

4. An identification of units that are subject to time-sharing and the type of time-shares being offered;

5. The duration of the time-shares;

6. The different types of units available;

7. Provisions, if any, that have been made for public utilities in the time-share project, including water, electricity, telephone, and sewerage facilities;

8. Restrictions, if any, as to what changes a time-share owner may make to his unit in which his time-share is located; and

9. Whether or not the units are restricted solely to residential use.

18VAC48-20-580. Declarant/developer, time-share condominium.

In addition to the information required by 18VAC48-20-330 of this chapter, the following information shall be stated with regard to every director, partner or trustee of the declarant/developer: (i) name and address; and (ii) principal occupation. The name and address of each person owning or controlling an interest of 20% or more in the time-share project shall also be indicated.

18VAC48-20-590. Terms of offering, time-share condominium.

In addition to the information required by 18VAC48-20-340 A of this chapter, this section shall set forth provisions with respect to the purchaser's right to cancel his purchase contract. Such disclosure shall be consistent with the applicable statutory provision, § 55-79.88(c) or § 55-376 of the Code of Virginia. Special escrow requirements of § 55-375 of the Code of Virginia shall be likewise described in this section.

18VAC48-20-600. Encumbrances, time-share condominium.

In addition to the information required by 18VAC48-20-350 of this chapter, regardless of the form of time-share project, the section shall describe the extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit. The section shall discuss the consequences that the filing of federal tax liens would have on the project.

18VAC48-20-610. Unit owners' association, time-share condominium.

A. In addition to the information required by 18VAC48-20-370 of this chapter, this section shall contain either a section captioned "Administration of Time-Share Estate Program" or a section captioned "Administration of Time-Share Use Program," depending upon the form of time-shares being offered by the developer. The section shall discuss the manner in which the time-share program will be governed and administered.

B. "Administration of time-share estate program."

1. The section shall describe the functions and the organization's structure of the time-share estate owners' association formed pursuant to the Virginia Nonstock Corporation Act. The description shall indicate:

a. The existence or provisions for a board of directors and officers;

b. The manner of their election or appointment;

c. The assignment or delegation of responsibility for performance of the functions of the unit owners' association; and

d. Those items outlined in § 55-368, numbered 2 through 10, of the Code of Virginia.

2. The section shall describe the allocation of voting power among the time-share estate owners and will explain how votes will be cast. Any provision in the time-share instruments for regular meetings of the estate owners shall be mentioned.

3. The significant terms of any lease of recreational areas or similar contract or agreement affecting the use, maintenance or access of all or any part of the time-share shall be stated. A brief narrative statement of the effect of each of any such agreement shall be included.

4. Rules and regulations for the use, enjoyment, and occupancy of units, and the authority to promulgate and

amend such rules shall be discussed. Included shall be a description of the method, if any, to be employed to assign or reserve occupancy periods for the time-share owners. Methods for providing alternate use periods or monetary compensation to a time-share owner if his contracted-for unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation shall be discussed.

5. Any standing committees established or to be established to perform functions of the time-share estate owners' association shall be discussed. Such committees include, without limitation, executive committees, architectural control committees and committees having the authority to interpret time-share instruments or rules and regulations.

6. Any power of the developer or of the time-share estate owners' association to enter units shall be discussed. To the extent each is applicable, the following facts shall be stated:

a. A unit may be entered without notice to the time-share owners;

b. The developer or representatives of the time-share estate owners' association are empowered to take actions or perform work in a unit without the consent of the units owners; and

c. The time-share owners may be required to bear the costs of actions so taken or work so performed.

7. The section shall describe any routine janitorial procedures that are to occur between occupancy periods of time-share owners, as well as any maintenance program that is to take place on an annual or semi-annual basis.

8. The managing agent, if any, shall be identified. If a managing agent is to be employed in the future, the criteria, if any, for selection of the managing agent shall be briefly stated. The section shall indicate any relationship between the managing agent and the developer or a member of the board of directors or an officer of the time-share estate owners' association. The duration of any management agreement shall be stated.

9. The section shall discuss any retention by the developer of control over the time-share estate owners' association. The association's power to pass special assessments against and raise the annual assessments of the time-share owners upon the termination of the developer control shall also be discussed.

C. "Administration of time-share use program." The section shall provide the information required by § 55-371 of the Code of Virginia.

18VAC48-20-620. Financial matters, time-share condominium.

A. In addition to the information required by 18VAC48-20-390 of this chapter, this section shall contain either a section captioned "Finances of Time Share Estate Ownership" or a section captioned "Finances of Time-Share Use Ownership," depending upon the form of time-share development used in the projects. The section shall discuss the expenses incident to the ownership of a time-share in the manner provided in subsections B through H hereof.

B. The section shall describe the nature of the costs and expenses of operating the time-share program and shall distinguish between those to be paid by the developer and those to be paid by the time-share owners. The section shall explain how the responsibilities for payment of operating costs will be apportioned among the time-share owners. In the case of a time-share estate program, this section shall describe and distinguish between developer expenses and time-share estate occupancy expenses as well as the meaning of the "Developer Control Period" as outlined in § 55-369 of the Code of Virginia, and when it commences and ends. Mention shall be made of the developer's right to collect a periodic fee from the time-share estate owner for the payment of the latter expenses; the method of apportionment between time-share estate owners shall be explained.

C. The section shall contain a statement describing any current or expected fees or charges to be paid by time-share owners for the use and enjoyment of any facilities related to the project. This shall include, without limitation, any fee attributable to the use of recreational facilities mentioned in any of the time-share documents or during the marketing activities.

D. The section shall contain a statement describing the extent to which financial arrangements, if any, have been provided for completion of any time-share unit offered for sale.

E. The section shall describe any services which the developer provides or expenses it pays which may become at any subsequent time a time-share expense of the time-shares, and the projected time-share expense liability attributable to each of those services or expenses for each time-share.

F. The section shall contain the latest annual balance sheet and a projected budget for the program for one year after the date of the first transfer to a purchaser. After that one-year period, a current budget shall be included in lieu of the projected budget and annual balance sheet mentioned above. All budgets shall be accompanied by a statement indicating the name of the preparer of the budget, and a statement explaining all budgetary assumptions concerning occupancy and inflation. All budgets must include, without limitation: (i) a statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and

replacements; and (ii) a statement of any other reserves. If the project is a time-share estate project and if the developer control period has not ended, the budget shall also include: (i) the projected common expense liability for all time-share owners; (ii) the projected common expense liability by category of expenditures; and (iii) a statement of the amount included in the budget reserved for repairs to and refurbishing of the project and the replacement of the personalty situated therein.

G. The "Finances of Time-Share Use Ownership" section shall, where the developer's equity in the project is less than $250,000, include a current audited financial statement disclosing the developer's net worth. Such statement shall specifically state the amount of equity in the project.

H. The section shall discuss the effect of failure of a time-share owner to pay when due the assessments, fees or charges levied against his time-share. Such discussion shall indicate provisions for penalties to be applied in the case of overdue assessments including the lien authorized by § 55-370 B of the Code of Virginia, and for the acceleration of unpaid assessments.

18VAC48-20-630. Insurance, time-share condominium.

In addition to the information required by 18VAC48-20-400 of this chapter, this section shall describe the insurance coverage provided for the benefit of time-share owners. Included shall be a discussion of the comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use and enjoyment of units by time-share estate owners or time-share use owners or their guests. It shall be made clear that in the case of a time-share estate project the costs associated with this liability insurance will be borne by the developer during the developer control period, and thereafter, the costs will be assumed by the time-share estate owners' association; and that in the case of a time-share use project, the costs associated with securing and maintaining such insurance shall be borne by the developer.

Depending on the time-share organization employed by the developer, §§ 55-368(7) or 55-371(7) of the Code of Virginia shall be included in this discussion.

18VAC48-20-640. Taxes, time-share condominium.

In addition to the information required by 18VAC48-20-410 of this chapter, this section shall describe all existing or proposed taxes to be levied against time-shares individually including, without limitation, real property taxes, transient taxes and other special assessments.

18VAC48-20-650. Exchange program, time-share condominium.

The public offering statement shall contain a section captioned "Exchange Program." if, at the time of purchase of a time-share, the purchaser is permitted or required to become a member of or a participant in an exchange program. An "exchange program" is a program offered by the developer or an independent exchange agent for the exchange of occupancy rights with the owners of time-shares of other time-share projects. This section shall contain the information required by § 55-374 B of the Code of Virginia.

Part VIII
Post-Registration Provisions

18VAC48-20-660. Material change defined.

As used in 18VAC48-20-670 through 18VAC48-20-700 of this chapter, "material change" means a change which renders inaccurate, incomplete or misleading, any information or document disclosed in or attached to a public offering statement whose form and content are designated for use pursuant to 18VAC48-20-100 G or 18VAC48-20-680 B of this chapter. Without limiting the generality of the preceding sentence, a material change shall be whenever (i) information or a document required to be disclosed in or attached to a public offering statement but not so disclosed or attached by reason of its previous unavailability or nonexistence becomes available or comes into existence and (ii) a new budget is adopted.

18VAC48-20-670. Amendment of public offering statement.

A. Prior to or upon the occurrence of a material change, the declarant shall amend the public offering statement to disclose the modified or additional information or to include the modified or additional document, as the case may be. The declarant may amend the public offering statement other than in connection with a material change.

B. Amendment of the public offering statement may be accomplished in any intelligible manner and, to the extent that strict compliance with any of the provisions of these regulations governing the form of presentation of information in the public offering statement would be unduly burdensome, the declarant may deviate therefrom in amending the public offering statement, provided that (i) no such deviation shall be more extensive than is necessary and appropriate under the circumstances; (ii) the requirements of 18VAC48-20-230 and 18VAC48-20-280 of this chapter are strictly observed and (iii) the presentation of information in the amended public offering statement is organized so as to facilitate reading and comprehension. Nothing contained herein shall authorize a deviation from strict compliance with a provision of these regulations governing the substance of disclosure in the public offering statement. If any information has become inaccurate or misleading by reason of the material change and is not deleted from the public offering statement in connection with its amendment, such fact shall be clearly noted.

C. Correction of spelling, grammar, omission or other similar errors not affecting the substance of a public offering

statement shall not be deemed an amendment of the public offering statement for the purposes of these regulations; provided, however, that the declarant shall file with the board a copy of a public offering statement so corrected.

18VAC48-20-680. Filing of amended public offering statement.

A. The declarant shall promptly file with the board a copy of an amended public offering statement. Unless subsection D hereof applies, the declarant shall, as part of such filing, update the application for registration on file with the board either by filing a new application or by advising the board of changes in the information contained in a previously filed application or file new or substitute documents. In the case of a public offering statement (i) amended other than in connection with a material change or (ii) presumed current pursuant to 18VAC48-20-700 of this chapter, the filing shall indicate the date of amendment.

B. Unless subsection D hereof applies, the board shall issue a notice of filing within five business days following receipt in proper form of the materials required by subsection A hereof. The board shall review the amended public offering statement and supporting materials to determine whether the amendment complies with 18VAC48-20-670 of this chapter. At such time as the board affirmatively determines that the amendment complies with 18VAC48-20-670 of this chapter, but not later than the 30th day following issuance of the notice of filing, it shall enter an order designating the amended form and content of the public offering statement to be used. Such order shall provide that previous orders designating the form and content of the public offering statement for use are superseded.

C. If the board determines, pursuant to subsection B hereof, that an amendment to the public offering statement does not comply with 18VAC48-20-670 of this chapter, it shall immediately, but in no event later than the 30th day following issuance of the notice of filing enter an order declaring the amendment not in compliance with 18VAC48-20-670 of this chapter and specifying the particulars of such noncompliance. In the case of a public offering statement amended other than in connection with a material change, the order shall relate back to the date of amendment. If neither of the orders provided for by this subsection and subsection B hereof are entered within the time allotted, the amendment shall be deemed to comply with 18VAC48-20-670 of this chapter, except that the 30-day period may be extended in the manner provided for extension of the correction period by 18VAC48-20-100, subsection D of this chapter. The declarant may, at any time correct and refile an amended public offering statement; provided, however, that if an order of noncompliance has been entered with respect to the amendment, all of the provisions of subsections A and B hereof and this subsection shall apply to such refiling.

D. If the material change which resulted in amendment of the public offering statement was an expansion of the condominium or the formation of units out of convertible land or convertible space, the declarant shall file a complete application for registration of the additional units, provided, that no such application need be filed for units previously registered. Such application for registration shall be subject to all of the provisions of 18VAC48-20-70 through 18VAC48-20-150 of this chapter and the board shall observe the procedures of 18VAC48-20-100 of this chapter in regard to the application. Documents then on file with the board and not changed in connection with the creation of additional units need not be refiled, provided that the application indicates that such documents are unchanged.

E. In each case in which an amended document is filed pursuant to this paragraph and the manner of its amendment is not apparent on the face of the document, the declarant shall provide an indication of the manner and extent of amendment.

18VAC48-20-690. Current public offering statement.

A. A public offering statement is current if its form and content are designated for use pursuant to 18VAC48-20-100G or 18VAC48-20-680 B of this chapter and remains current so long as no material change occurs and any amendment of the public offering statement other than in connection with a material change is made in compliance with 18VAC48-20-670 of this chapter.

B. A public offering statement ceases to be current upon the occurrence of a material change and, subject to the exception provided in 18VAC48-20-700 of this chapter, does not thereafter become current unless and until (i) it is amended pursuant to 18VAC48-20-670 of this chapter and (ii) the board, with respect to such amendment, enters an order pursuant to 18VAC48-20-100 G or 18VAC48-20-680 B or fails to enter, within the times allotted therefor, any of the orders provided for by 18VAC48-20-100 E and G or 18VAC48-20-680 B and C.

C. If the board determines that the public offering statement amended other than in connection with a material change fails to comply with 18VAC48-20-670 of this chapter that public offering statement ceases to be current as of the date of amendment. Such cessation shall be affected retroactively by the board's entry of an order of noncompliance and nothing contained herein shall limit the declarant's right to use the public offering statement as current prior to the entry of an order of noncompliance. The public offering statement does not thereafter become current unless and until it is corrected and refiled and the board, with respect to such amendment, enters an order pursuant to 18VAC48-20-680 B of this chapter or fails to enter either of the orders provided for by 18VAC48-20-680 B or C of this chapter.

D. Upon issuance of a public offering statement amended because of the occurrence of a change that materially and adversely affects the purchaser's bargain, that was caused by the declarant or any agent or affiliate of the declarant, and of the possibility of which the purchaser was not forewarned in the public offering statement given him pursuant to § 55-79.88(c) of the Code of Virginia, then the purchaser's 10-day rescission right afforded by § 55-79.88(c) of the Code of Virginia is renewed. The declarant shall deliver the public offering statement so amended and give the purchaser notice of his renewed rescission right as required by 18VAC48-20-710 of this chapter.

18VAC48-20-700. Certain amended public offering statements presumed current.

A. A public offering statement amended by the declarant to disclose any material change which is an aspect or result of the orderly development of the condominium or the normal functioning of the unit owners' association shall be presumed current immediately upon its amendment, subject, however, to the condition that the board shall subsequently determine that the amendment was made in compliance with 18VAC48-20-670 of this chapter. An amended public offering statement presumed current pursuant to this subsection shall be referred to elsewhere in these regulations as a presumptively current public offering statement.

B. The declarant shall file with the board a copy of a presumptively current public offering statement and all of the provisions of 18VAC48-20-680 of this chapter shall apply to such filing except that, in addition: (i) filing shall be made not later than 10 business days following the occurrence of the material change which necessitated the amendment, and (ii) the filing shall indicate the declarant's plans, if any, to deliver the presumptively current public offering statement to purchasers pursuant to § 55-79.88(c) of the Code of Virginia.

C. A board order declaring that an amendment which resulted in a presumptively current public offering statement is not in compliance with 18VAC48-20-670 of this chapter shall render ineffective the presumption that the public offering statement is current. In that event, the public offering statement shall be deemed to have ceased being current upon the occurrence of the material change which necessitated the amendment. Nothing contained herein shall limit the declarant's right to use a presumptively current public offering statement prior to entry of the order of noncompliance. A presumptively current public offering statement also ceases being current upon the declarant's failure to file within the time provided in subsection B hereof, but such cessation shall have no retroactive effect. A presumptively current public offering statement which ceases to be current pursuant to this subsection does not thereafter become current unless and until it is filed or refiled with the board pursuant to 18VAC48-20-680 of this chapter and the board, with respect to such public offering statement, enters an order pursuant to 18VAC48-20-100G or 18VAC48-20-680B of this chapter or fails to enter, within the times allotted therefor, any of the orders provided for in 18VAC48-20-100 E and G or 18VAC48-20-680 B and C of this chapter.

18VAC48-20-710. Public offering statement not current; notification of purchasers.

The declarant shall notify every purchaser to whom has been delivered a public offering statement which was subsequently determined not to have been current at the time of its delivery. Such notification shall indicate that any contract for disposition of a condominium unit may be cancelled unless and until the declarant complies with the provisions of § 55-79.88(c) of the Code of Virginia. The declarant shall file a copy of the notification with the board and provide proof that such notification has been delivered to all purchasers under contract.

18VAC48-20-720. Annual report by declarant.

Prior to filing the annual report required by § 55-79.93 of the Code of Virginia, the declarant shall review the public offering statement then being delivered to purchasers. If such public offering statement is current, the declarant shall so certify in the annual report and include a copy thereof in the report. If such public offering statement is not current, the declarant shall amend the public offering statement and the annual report shall, in that event, consist of a filing complying with the requirements of 18VAC48-20-680 of this chapter. In addition, the annual report shall indicate the number of condominium units (i) conveyed, (ii) under contract for disposition, (iii) being rented by the declarant and (iv) still being offered. The annual report shall indicate the status of declarant's control retained pursuant to § 55-79.74 of the Code of Virginia. The annual report may be in any form suitable for compliance with the provisions of this section and § 55-79.93 of the Code of Virginia.

18VAC48-20-730. Provisions applicable to substituted disclosure document, prospectus.

A. The provisions of 18VAC48-20-660 through 18VAC48-20-720 of this chapter shall apply to a substituted disclosure document in the same manner and to the same extent that they apply to public offering statements.

B. The provisions of 18VAC48-20-660 through 18VAC48-20-700 of this chapter shall apply to a prospectus only to the extent that amendment of the information or documents attached to the prospectus pursuant to 18VAC48-20-460 of this chapter is required or permitted. The body of the prospectus shall be amended only as provided in applicable securities law. The declarant shall immediately file with the board any amendments to the body of the prospectus and, upon receipt thereof, the board shall enter an order designating the form and content of the prospectus to be used and providing that previous orders designating the form and content of the prospectus for use are superseded. A

prospectus is current so long as it is effective under applicable securities law and the information and documents attached thereto are current under the provisions of 18VAC48-20-690 and 18VAC48-20-700 of this chapter. The declarant shall immediately notify the board if the prospectus ceases being effective. If no prospectus is effective and the declarant proposes to continue offering condominium units, the declarant shall file a public offering statement with the board pursuant to 18VAC48-20-680 of this chapter.

C. The provisions of 18VAC48-20-710 of this chapter shall apply to a prospectus in the same manner and to the same extent that they apply to a public offering statement.

D. In an annual report involving a prospectus the declarant shall comply with all of the provisions of 18VAC48-20-720 of this chapter applicable to public offering statements and, in addition, shall certify that an effective prospectus is available for delivery to purchasers and shall indicate the declarant's plans or expectations regarding the continuing effectiveness of the prospectus.

FORMS

Appendix A Public Offering Statement.

CONDOMINIUM REGULATIONS - APPENDIX A

PURCHASER SHOULD READ THIS DOCUMENT FOR HIS OWN PROTECTION

PUBLIC OFFERING STATEMENT

NAME OF CONDOMINIUM:

LOCATION OF CONDOMINIUM:

NAME OF DECLARANT:

ADDRESS OF DECLARANT:

EFFECTIVE DATE OF PUBLIC OFFERING STATEMENT: _____

AMENDED: _____

REVISED: _____

This Public Offering Statement presents information regarding condominium units being offered for sale by the declarant. Virginia law requires that a Public Offering Statement be given to every Purchaser in order to provide full and accurate disclosure of the significant features of the condominium units being offered. The Public Offering Statement is not intended, however, to be all-inclusive. The Purchaser should consult other sources for details not covered by the Public Offering Statement.

The Public Offering Statement summarizes information and documents furnished by the declarant to the Virginia Common Interest Community Board. The Board has carefully reviewed the Public Offering Statement to ensure that it is an accurate summary but does not guarantee its accuracy. In the event of any inconsistency between the Public Offering Statement and the material it is intended to summarize, the latter will control.

Under Virginia Law a purchaser of a condominium unit is afforded a ten day period during which he or she may cancel the contract of sale and obtain a full refund of any sums deposited in connection with the contract. The ten day period begins running on the contract date or the date of delivery of a Public Offering Statement, whichever is later. The purchaser should inspect the condominium unit and all common areas and obtain professional advice. If the purchaser elects to cancel, he or she must deliver notice of cancellation to the declarant by hand or by United States mail, return receipt requested.

The following are violations of Virginia law and should be reported to the Virginia Common Interest Community Board, Perimeter Center, Suite 400, 9960 Mayland Drive, Richmond, Virginia 23233:

-- a misrepresentation made in the Public Offering Statement
-- an oral modification of the Public Offering Statement
--a representation that the Board has passed on the merits of the Condominium units being offered or endorses the condominium.

PURCHASER SHOULD READ THIS DOCUMENT FOR HIS OWN PROTECTION

VA.R. Doc. No. R09-1567; Filed October 21, 2008, 2:55 p.m.

Emergency Regulation

Title of Regulation: **18VAC48-50. Common Interest Community Manager Regulations (adding 18VAC48-50-10 through 18VAC48-50-200).**

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Effective Date: November 13, 2008, through November 12, 2009.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4298, or email cic@dpor.virginia.gov.

Preamble:

The new regulation establishes the qualifications and standards of practice and conduct for common interest community managers. In addition, the regulation establishes the qualifications for provisional licensure, which is required pursuant to § 54.1-2346 F of the Code of Virginia. In accordance with this section, provisional licenses must be issued to those entities that make application prior to January 1, 2009.

Chapters 851 and 871 (HB 516 and SB 301) of the 2008 Acts of Assembly require these regulations to be effective within 280 days of enactment. Therefore, there is an "emergency situation" as defined in § 2.2-4011 of the Administrative Process Act.

CHAPTER 50
COMMON INTEREST COMMUNITY MANAGER REGULATIONS

Part I
General

18VAC48-50-10. Definitions.

Section 54.1-2345 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Association"

"Board"

"Common interest community"

"Common interest community manager"

"Declaration"

"Governing board"

"Lot"

"Management services"

The following words, terms, and phrases, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise.

"Address of record" means the mailing address designated by the regulant to receive notices and correspondence from the board. Notice mailed to the address of record by certified mail, return receipt requested, shall be deemed valid notice.

"Applicant" means a common interest community manager that has submitted an application for licensure.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

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

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia and properly registered, as may be required, with the Virginia State Corporation Commission.

"Full-time employee" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed common interest community manager.

"Gross receipts" means all revenue for management services excluding pass-through expenses or reimbursement of expenditures by the regulant on behalf of an association.

"Regulant" means a common interest community manager as defined in § 54.1-2345 of the Code of Virginia who holds a license issued by the Board.

"Reinstatement" means the process and requirements through which an expired license can be made valid without the regulant having to apply as a new applicant.

"Renewal" means the process and requirements for periodically approving the continuance of a license for another period of time.

"Responsible person" means the individual who shall be designated by each firm to ensure compliance with Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, and all regulations of the board, and to receive communications and notices from the board that may affect the firm. In the case of a sole proprietorship, the sole proprietor shall have the responsibilities of the responsible person.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

Part II
Entry

18VAC48-50-20. Application procedures.

All applicants seeking licensure shall submit an application with the appropriate fee specified in 18VAC48-50-70. Application shall be made on forms provided by the department.

By submitting the application to the department, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations.

The receipt of an application and the deposit of fees by the board does not indicate approval by the board.

The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained herein and on the application. Applications will not be considered complete until all required documents are received by the board.

A firm will be notified within 30 days of the board's receipt of an initial application if the application is incomplete. Firms that fail to complete the process within 12 months of receipt of the application in the board's office must submit a new application and fee.

18VAC48-50-30. Qualifications for licensure.

Firms that provide common interest community management services shall submit an application on a form prescribed by the board and shall meet the requirements set forth in § 54.1-2346 of the Code of Virginia, as well as the additional qualifications of this section.

A. Any firm offering management services as defined in § 54.1-2345 of the Code of Virginia shall hold a license as a common interest community manager. All names under which the common interest community manager conducts business shall be disclosed on the application. The name under which the firm conducts business and holds itself out to the public (i.e., the trade or fictitious name) shall also be disclosed on the application. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of court in the county or jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

B. The applicant shall disclose the firm's mailing address, the firm's physical address, and the address of the office from which the firm provides management services to Virginia common interest communities. A post office box is only acceptable as a mailing address when a physical address is also provided.

C. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, the responsible person, and any of the principals of the firm:

1. All felony convictions.

2. All misdemeanor convictions, in any jurisdiction, within three years of the date of application.

3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

D. The applicant shall submit evidence of a blanket fidelity bond or employee dishonesty insurance policy in accordance with § 54.1-2346(D) of the Code of Virginia. Proof of current bond or insurance policy must be submitted in order to obtain or renew the license The bond or insurance policy must be in force no later than the effective date of the license and shall remain in effect through date of expiration of the license.

E. The applicant shall be in compliance with the standards of conduct and practice set forth in Part V (18VAC48-50-140 et. seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the license is in effect.

F. The applicant, the responsible person, and any principals of the firm shall be in good standing in every jurisdiction and with every board or administrative body where licensed, certified, or registered and the board, at its discretion, may deny licensure to any applicant who has been subject to, or whose principals have been subject to, any form of disciplinary action, including but not limited to, reprimand, revocation, suspension or denial, imposition of a monetary penalty, required to complete remedial education, or any other corrective action, in any jurisdiction or by any board or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to applying for licensure in Virginia.

G. The applicant shall provide all relevant information about the firm, the responsible person, and any of the principals of the firm for the seven (7) years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies, and specifically shall provide all relevant financial information related to providing management services as defined in § 54.1-2345 of the Code of Virginia.

H. Applicants for licensure shall hold an active designation as an Accredited Association Management Company by the Community Associations Institute.

I. In lieu of the provisions of subsection H, applicants who are unable to meet the requirements for designation as an Accredited Association Management Company by the Community Associations Institute may be licensed provided the applicant submits proof to the board that the applicant has at least one full-time supervisory employee or officer involved in all aspects of the management services offered and provided by the firm, and a majority of persons in a supervisory capacity meets one of the following:

1. Holds an active designation as a Professional Community Association Manager and provides proof of having been actively engaged in providing management services for a period of 12 months immediately preceding application; or

2. Holds an active designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers and provides proof of five years of experience in providing management services. Of the required five years experience, a minimum of 12 months of experience must have been gained immediately preceding application; or

3. Holds an active designation as an Association Management Specialist and provides proof of five years of experience in providing management services. Of the required five years experience, a minimum of 12 months of experience must have been gained immediately preceding application; or

4. Has completed a training program and certifying examination approved by the board.

J. The firm shall designate a responsible person who is an employee of the firm.

18VAC48-50-40. Provisional licenses.

Provisional licenses shall be issued in accordance with § 54.1-2346(F) of the Code of Virginia to those applicants who meet the provisions of this chapter excluding subsections H and I of 18 VAC 48-50-30.

18VAC48-50-50. Application denial.

The board may refuse initial licensure due to an applicant's failure to comply with entry requirements or for any of the reasons for which the board may discipline a regulant. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia. The denial is considered to be a case decision and is subject to appeal under Chapter 40 of Title 2.2 of the Code of Virginia.

Part III
Fees

18VAC48-50-60. General fee requirements.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee is on time. Checks or money orders shall be made payable to the Treasurer of Virginia.

18VAC48-50-70. Fee schedule.

Fee Type	Fee Amount	When Due
Initial Application*	$125.00	With initial application filed on or after January 1, 2009
Provisional License Application*	$275.00	With initial application filed on or before December 31, 2008
Renewal**	$100.00	With renewal application
Reinstatement (includes a $200 reinstatement fee in addition to the regular $100 renewal fee)	$300.00	With renewal application

*Includes a $25.00 recovery fund assessment in accordance with § 55-530.1 of the Code of Virginia.

**The first renewal after the effective date of these regulations shall include a $25.00 recovery fund assessment in accordance with § 55-530.1 of the Code of Virginia.

18VAC48-50-80. Annual assessment.

In addition to the fees listed above, each common interest community manager must submit an annual assessment in accordance with § 54.1-2349(A)(1) of the Code of Virginia. The annual assessment shall be submitted with the initial application and with each renewal application. Common interest community managers shall submit documentation of gross receipts for the preceding calendar year with each annual assessment.

Provisional licenses will be subject to the annual assessment for each year that the provisional license is in effect. Provisional licensees shall submit documentation of gross receipts for the preceding calendar year with each annual assessment. Failure to submit the annual assessment within 30 days of the request by the board shall result in the automatic suspension of the license.

Part IV
Renewal and Reinstatement

18VAC48-50-90. Renewal required.

A license issued under this chapter shall expire one year from the last day of the month in which it was issued. A fee

shall be required for renewal. In accordance with § 54.1-2346(F) of the Code of Virginia, provisional licenses shall expire on June 30, 2011, and shall not be renewed.

18VAC48-50-100. Expiration and renewal.

A. Prior to the expiration date shown on the license, licenses shall be renewed upon completion of the renewal application, submittal of proof of current bond or insurance policy as detailed in 18VAC48-50-30 D, and payment of the fees specified in 18VAC48-50-70 and 18VAC48-50-80. The board will mail a renewal notice to the regulant at the last known mailing address of record. Failure to receive this notice shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a copy of the license may be submitted with the required fees as an application for renewal. By submitting an application for renewal, the regulant is certifying continued compliance with the Standards of Conduct and Practice in Part V (18VAC48-50-140 et. seq.) of this chapter.

B. Applicants for renewal shall continue to meet all of the qualifications for licensure set forth in 18VAC48-50-30.

18VAC48-50-110. Reinstatement required.

A. If the requirements for renewal of a license, including receipt of the fees by the board and submittal of proof of current bond or insurance policy as detailed in 18VAC48-50-30 D, are not completed within 30 days of the license expiration date, the regulant shall be required to reinstate the license by meeting all renewal requirements and by paying the reinstatement fee specified in 18VAC48-50-70.

B. A license may be reinstated for up to six months following the expiration date. After six months, the license may not be reinstated under any circumstances and the regulant must meet all current entry requirements and apply as a new applicant.

C. Any regulated activity conducted subsequent to the license expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

18VAC48-50-120. Status of license during the period prior to reinstatement.

A regulant who applies for reinstatement of a license shall be subject to all laws and regulations as if the regulant had been continuously licensed. The regulant shall remain under and be subject to the disciplinary authority of the board during this entire period.

18VAC48-50-130. Board discretion to deny renewal or reinstatement.

The board may deny renewal or reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a current regulant.

The board may deny renewal or reinstatement of a license if the regulant has been subject to a disciplinary proceeding and has not met the terms of an agreement for licensure, has not satisfied all sanctions, or has not fully paid any monetary penalties and costs imposed by the board.

Part V
Standards of Conduct and Practice

18VAC48-50-140. Grounds for disciplinary action.

The board may place a regulant on probation, impose a monetary penalty in accordance with § 54.1-2351.H of the Code of Virginia, or revoke, suspend or refuse to renew any license when the regulant has been found to have violated or cooperated with others in violating any provisions of the regulations of the board or Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia.

18VAC48-50-150. Maintenance of license.

A. No license issued by the board shall be assigned or otherwise transferred.

B. A regulant shall report, in writing, all changes of address to the board within 30 days of the change and shall return the license to the board. In addition to the address of record, a physical address is required for each license. If the regulant holds more than one license, certificate, or registration, the regulant shall inform the board of all licenses, certificates, and registrations affected by the address change.

C. Any change in any of the qualifications for licensure found in 18VAC48-50-30 shall be reported to the board within 30 days of the change.

D. Notwithstanding the provisions of 18VAC48-50-150 C, a regulant shall report the cancellation, amendment, expiration, or any other change of any bond or insurance policy submitted in accordance with 18VAC48-50-30 D within five days of the change.

18VAC48-50-160. Maintenance and management of accounts.

Regulants shall maintain all funds from associations in accordance with § 54.1-2353 A of the Code of Virginia. Funds that belong to others that are held as a result of the fiduciary relationship shall be labeled as such to clearly distinguish funds that belong to others from those of the common interest community manager's funds.

18VAC48-50-170. Change of business entity requires a new license.

A. Licenses are issued to firms as defined in this chapter and are not transferable. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the license becomes void and shall be returned to the board within 30 days of the change. Such changes include but are not limited to:

1. Cessation of the business or the voluntary termination of a sole proprietorship or general partnership;

2. Death of a sole proprietor;

3. Formation, reformation, or dissolution of a general partnership, limited partnership, corporation, limited liability company, association, or any other business entity recognized under the laws of the Commonwealth of Virginia; or

4. The suspension or termination of the corporation's existence by the State Corporation Commission.

B. When a new firm is formed, the new firm shall apply for a new license, on a form provided by the board, before engaging in any activity regulated by Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.

18VAC48-50-180. Notice of adverse action.

Regulants shall notify the board of the following actions:

A. Any disciplinary action taken by another jurisdiction, board, or administrative body of competent jurisdiction, including but not limited to any reprimand, license revocation, suspension or denial, monetary penalty, or requirement for remedial education or other corrective action.

B. Any voluntary surrendering of a license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

C. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, of any felony or of any misdemeanor in any jurisdiction. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

The notice must be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

18VAC48-50-190. Prohibited acts.

The following acts are prohibited and any violation may result in disciplinary action by the board:

A. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any of the regulations of the board or Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia, Chapter 24 (§ 55-424 et seq.) of Title 55 of the Code of Virginia, Chapter 26 (§ 55-508 et seq.) of Title 55 of the Code of Virginia, or Chapter 29 (§ 55-528 et seq.) of Title 55 of the Code of Virginia, or engaging in any acts enumerated in §§ 54.1-102 and 54.1-111 of the Code of Virginia.

B. Allowing the common interest community manager license to be used by another.

C. The firm or any principals of the firm having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180 of this section.

D. Failing to inform the board in writing within 30 days that the firm or any principals of the firm was convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180 of this section.

E. Failing to report a change as required by 18VAC48-50-150, 18VAC48-50-160, or 18VAC48-50-170.

F. The intentional and unjustified failure to complete work contracted for or agreed upon.

G. The intentional and unjustified failure to comply with the terms of the contract, operating agreement, or governing documents.

H. Obtaining or attempting to obtain a license by false or fraudulent representation, or maintaining, renewing, or reinstating a license by false or fraudulent representation.

I. Engaging in improper, dishonest, or fraudulent conduct in providing management services.

J. Failing to satisfy any judgments or restitution orders entered by a court or arbiter of competent jurisdiction.

K. Negligence or incompetence in the practice of the profession or occupation.

L. The retention or misapplication of funds paid for which work is either not performed or performed only in part.

M. Failing to handle association funds in accordance with the provisions of § 54.1-2353(A) or 18VAC48-50-160.

N. Failing to account in a timely manner for all money and property received by the regulant in which the association has or may have an interest.

O. Failing to disclose to the association material facts related to the association's property or concerning management services of which the regulant has actual knowledge.

P. Failing to provide complete records related to the association's management services to the association within 30 days of any request by the association or within 30 days of the termination of the contract.

Q. Commingling the funds of any association by a principal, his employees, or his associates with the principal's own funds, or those of his firm.

R. Failing to act in a manner that safeguards the interests of the public.

S. Failing to make use of a legible written contract clearly specifying the terms and conditions of the management

services to be performed by the common interest community manager. The contract shall include, but not be limited to, the following:

a. Beginning and ending dates of the contract;

b. Cancellation rights of the parties;

c. Records retention and distribution policy;

d. A general description of the records to be kept and the bookkeeping system to be used; and

e. The common interest community manager's license number.

Prior to commencement of the terms of the contract or acceptance of payments, the contract shall be signed by the regulant and the client or the client's authorized agent.

18VAC48-50-200. Response to inquiry and provision of records.

A. A regulant must respond within 10 days to the board or any of its agents regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a regulant of the board shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any transaction in which the regulant was involved, or for which the regulant is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A regulant shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

D. A regulant must respond to an inquiry by the board or its agents, other than requested under 18VAC48-50-200 A or 18VAC48-50-200 B, within 21 days.

VA.R. Doc. No. R09-1641; Filed October 21, 2008, 2:54 p.m.

BOARD FOR GEOLOGY

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: **18VAC70-10. Public Participation Guidelines (repealing 18VAC70-10-10 through 18VAC70-10-90).**

18VAC70-11. Public Participation Guidelines (adding 18VAC70-11-10 through 18VAC70-11-110).

Statutory Authority: §§ 2.2-4007.02 and 54.1-201 of the Code of Virginia.

Effective Date: December 10, 2008.

Agency Contact: David Dick, Executive Director, Board for Geology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8588, FAX (804) 527-4297, or email geology@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 actions; (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

18VAC70-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board for Geology. 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).

18VAC70-11-20. 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 Geology, 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

18VAC70-11-30. 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.

18VAC70-11-40. 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 18VAC70-11-30, 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 reproposed, 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

18VAC70-11-50. 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 reproposed 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.

18VAC70-11-60. 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.

18VAC70-11-70. 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.

18VAC70-11-80. 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.

18VAC70-11-90. 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.

18VAC70-11-100. 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.

18VAC70-11-110. 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. R09-1476; Filed October 20, 2008, 2:47 p.m.

BOARD OF MEDICINE

Emergency Regulation

Title of Regulation: **18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-10, 18VAC85-80-26, 18VAC85-80-40, 18VAC85-80-45, 18VAC85-80-50, 18VAC85-80-65, 18VAC85-80-70, 18VAC85-80-72, 18VAC85-80-73, 18VAC85-80-80, 18VAC85-80-90, 18VAC85-80-100, 18VAC85-80-110; adding 18VAC85-80-111; repealing 18VAC85-80-61).**

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

Effective Dates: November 1, 2008, through October 31, 2009.

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.

Preamble:

Chapters 64 and 89 (HB383 and SB134) of the 2008 Acts of Assembly require the Board of Medicine to establish requirements for the licensure of occupational therapy assistants. The second enactment in the legislation requires that the board promulgate regulations to implement the provisions of the act to be effective within 280 days of its enactment. Therefore, there is an "emergency situation" as defined in § 2.2-4011 of the Administrative Process Act.

The key provisions of the regulations are the national credential specified for licensure, the requirements for continuing competency and renewal, the provisions for supervision of occupational therapy assistants (OTA),

and the perimeters for practice. In order to be licensed, an applicant must pass the certification examination for an occupational therapy assistant from the National Board for Certification in Occupational Therapy (NBCOT). Practice by an OTA must be supervised by an occupational therapist (OT) and includes services that do not require the clinical decision or specific knowledge, skills and judgment of a licensed OT nor the discretionary aspects of the initial assessment, evaluation or development of a treatment plan.

Part I
General Provisions

18VAC85-80-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

"Board"

"Occupational therapy assistant"

"Practice of occupational therapy"

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

"ACOTE" means the Accreditation Council for Occupational Therapy Education.

"Active practice" means a minimum of 160 hours of professional practice as an occupational therapist or an occupational therapy assistant within the 24-month period immediately preceding renewal or application for licensure, if previously licensed or certified in another jurisdiction. The active practice of occupational therapy may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

"Advisory board" means the Advisory Board of Occupational Therapy.

~~"Board" means the Virginia Board of Medicine.~~

"Contact hour" means 60 minutes of time spent in continued learning activity.

"NBCOT" means the National Board for Certification in Occupational Therapy, under which the national examination for certification is developed and implemented.

"National examination" means the examination prescribed by NBCOT for certification as an occupational therapist or an occupational therapy assistant and approved for licensure in Virginia.

"Occupational therapy personnel" means appropriately trained individuals who provide occupational therapy services under the supervision of a licensed occupational therapist.

18VAC85-80-26. Fees.

A. The following fees have been established by the board:

1. The initial fee for the occupational therapist license shall be $130; for the occupational therapy assistant, it shall be $70.

2. The fee for reinstatement of the occupational therapist license that has been lapsed for two years or more shall be $180; for the occupational therapy assistant, it shall be $90.

3. The fee for active license renewal for an occupational therapist shall be $135 ~~and;~~ for ~~inactive license renewal shall be $70 and~~ an occupational therapy assistant, it shall be $70. The fees for inactive license renewal shall be $70 for an occupational therapist and $35 for an occupational therapy assistant. Renewals shall be due in the birth month of the ~~licensed therapist~~ licensee in each even-numbered year.

4. The additional fee for processing a late renewal application within one renewal cycle shall be $50 for an occupational therapist and $30 for an occupational therapy assistant.

5. The fee for a letter of good standing or verification to another state for a license shall be $10.

6. The fee for reinstatement of licensure pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

7. The fee for a returned check shall be $35.

8. The fee for a duplicate license shall be $5, and the fee for a duplicate wall certificate shall be $15.

9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be $35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $15 for each renewal cycle.

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC85-80-40. Educational requirements.

A. An applicant who has received his professional education in the United States, its possessions or territories, shall successfully complete all academic and fieldwork requirements of an accredited educational program as verified by the ACOTE.

B. An applicant who has received his professional education outside the United States, its possessions or territories, shall successfully complete all academic and clinical fieldwork requirements of a program approved by a member association of the World Federation of Occupational Therapists as verified by the candidate's occupational therapy program director and as required by the NBCOT and submit proof of proficiency in the English language by passing the Test of English as a Foreign Language (TOEFL) with a score

acceptable to the board. TOEFL may be waived upon evidence of English proficiency.

C. An applicant who does not meet the educational requirements as prescribed in subsection A or B of this section but who has received certification by the NBCOT as an occupational therapist or an occupational therapy assistant shall be eligible for licensure in Virginia and shall provide the board verification of his education, training and work experience acceptable to the board.

18VAC85-80-45. Practice by a graduate awaiting examination results.

A. A graduate of an accredited occupational therapy educational program may practice with the designated title of "Occupational Therapist, License Applicant" or "O.T.L.-Applicant" until he has taken and received the results of the licensure examination from NBCOT or for ~~one year~~ six months from the date of graduation, whichever occurs sooner. The graduate shall use one of the designated titles on any identification or signature in the course of his practice.

B. A graduate of an accredited occupational therapy assistant educational program may practice with the designated title of "Occupational Therapy Assistant -License Applicant" or "O.T.A.-Applicant" until he has taken and received the results of the licensure examination from NBCOT or for six months from the date of graduation, whichever occurs sooner. The graduate shall use one of the designated titles on any identification or signature in the course of his practice.

18VAC85-80-50. Examination requirements.

A. An applicant for licensure to practice as an occupational therapist shall submit evidence to the board that he has passed the certification examination for an occupational therapist and any other examination required for initial certification from the NBCOT.

B. An applicant for licensure to practice as an occupational therapy assistant shall submit evidence to the board that he has passed the certification examination for an occupational therapy assistant and any other examination required for initial certification from the NBCOT.

18VAC85-80-61. ~~Certification of occupational therapy assistants.~~ (Repealed.)

~~Effective July 26, 2005, a person who holds himself out to be or advertises that he is an occupational therapy assistant or uses the designation "O.T.A." or any variation thereof shall have obtained initial certification by the National Board for Certification in Occupational Therapy (NBCOT) as a certified occupational therapy assistant.~~

18VAC85-80-65. Registration for voluntary practice by out-of-state ~~licenses~~ licensees.

Any occupational therapist or an occupational therapy assistant who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of § 54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of $10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of § 54.1-2901 of the Code of Virginia.

Part III
Renewal of Licensure; Reinstatement

18VAC85-80-70. Biennial renewal of licensure.

A. An occupational therapist or an occupational therapy assistant shall renew his license biennially during his birth month in each even-numbered year by:

1. Paying to the board the renewal fee prescribed in 18VAC85-80-26;

2. Indicating that he has been engaged in the active practice of occupational therapy as defined in 18VAC85-80-10; and

3. Attesting to completion of continued competency requirements as prescribed in 18VAC85-80-71.

B. An occupational therapist or an occupational therapy assistant whose license has not been renewed by the first day of the month following the month in which renewal is required shall pay an additional fee as prescribed in 18VAC85-80-26.

18VAC85-80-72. Inactive licensure.

A. A licensed occupational therapist or an occupational therapy assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be required to maintain hours of active practice or meet the continued

competency requirements of 18VAC85-80-71 and shall not be entitled to perform any act requiring a license to practice occupational therapy in Virginia.

B. An inactive licensee may reactivate his license upon submission of the following:

1. An application as required by the board;

2. A payment of the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure;

3. If the license has been inactive for two to six years, documentation of having engaged in the active practice of occupational therapy or having completed a board-approved practice of 160 hours within 60 consecutive days under the supervision of a licensed occupational therapist; and

4. Documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed four years, in which the license has been inactive.

C. An occupational therapist or occupational therapy assistant who has had an inactive license for six years or more and who has not engaged in active practice, as defined in 18VAC85-80-10, shall serve a board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed occupational therapist.

D. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

18VAC85-80-73. Restricted volunteer license.

A. An occupational therapist or an occupational therapy assistant who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with § 54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, an occupational therapist or occupational therapy assistant shall submit an application to the board that documents compliance with requirements of § 54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18VAC85-80-26.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18VAC85-80-26.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining 10 hours of continuing education during the biennial renewal period with at least five hours of Type 1 and no more than five hours of Type 2 as specified in 18VAC85-80-71.

18VAC85-80-80. Reinstatement.

A. An occupational therapist or an occupational therapy assistant who allows his license to lapse for a period of two years or more and chooses to resume his practice shall submit a reinstatement application to the board and information on any practice and licensure or certification in other jurisdictions during the period in which the license was lapsed, and shall pay the fee for reinstatement of his licensure as prescribed in 18VAC85-80-26.

B. An occupational therapist or occupational therapy assistant who has allowed his license to lapse for two years but less than six years, and who has not engaged in active practice as defined in 18VAC85-80-10, shall serve a board-approved practice of 160 hours to be completed in two consecutive months under the supervision of a licensed occupational therapist.

C. An occupational therapist or an occupational therapy assistant who has allowed his license to lapse for six years or more, and who has not engaged in active practice, shall serve a board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed occupational therapist.

D. An applicant for reinstatement shall meet the continuing competency requirements of 18VAC85-80-71 for the number of years the license has been lapsed, not to exceed four years.

E. An occupational therapist or an occupational therapy assistant whose license has been revoked by the board and who wishes to be reinstated shall make a new application to the board and payment of the fee for reinstatement of his license as prescribed in 18VAC85-80-26 pursuant to § 54.1-2408.2 of the Code of Virginia.

Part IV
Practice of Occupational Therapy

18VAC85-80-90. General responsibilities.

A. An occupational therapist renders services of assessment, program planning, and therapeutic treatment upon request for such service. The practice of occupational therapy may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

B. An occupational therapy assistant renders services under the supervision of an occupational therapist that do not require the clinical decision or specific knowledge, skills and

judgment of a licensed occupational therapist and do not include the discretionary aspects of the initial assessment, evaluation or development of a treatment plan for a patient.

18VAC85-80-100. Individual responsibilities.

A. An occupational therapist provides assessment by determining the need for, the appropriate areas of, and the estimated extent and time of treatment. His responsibilities include an initial screening of the patient to determine need for services and the collection, evaluation and interpretation of data necessary for treatment.

B. An occupational therapist provides program planning by identifying treatment goals and the methods necessary to achieve those goals for the patient. The therapist analyzes the tasks and activities of the program, documents the progress, and coordinates the plan with other health, community or educational services, the family and the patient. The services may include but are not limited to education and training in activities of daily living (ADL); the design, fabrication, and application of orthoses (splints); guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of physical environments for individuals who have disabilities.

C. An occupational therapist provides the specific activities or therapeutic methods to improve or restore optimum functioning, to compensate for dysfunction, or to minimize disability of patients impaired by physical illness or injury, emotional, congenital or developmental disorders, or by the aging process.

D. An occupational therapy assistant is responsible for the safe and effective delivery of those services or tasks delegated by and under the direction of the occupational therapist. Individual responsibilities of an occupational therapy assistant may include:

1. Participation in the evaluation or assessment of a patient by gathering data, administering tests and reporting observations and client capacities to the occupational therapist;

2. Participation in intervention planning, implementation and review;

3. Implementation of interventions as determined and assigned by the occupational therapist;

4. Documentation of patient responses to interventions and consultation with the occupational therapist about patient functionality;

5. Assistance in the formulation of the discharge summary and follow-up plans; and

6. Implementation of outcome measurements and provision of needed patient discharge resources.

18VAC85-80-110. Supervisory responsibilities of an occupational therapist.

A. Delegation to ~~unlicensed occupational therapy personnel~~ an occupational therapy assistant.

1. An occupational therapist shall be ~~responsible for supervision of occupational therapy personnel who work under his direction~~ ultimately responsible and accountable for patient care and occupational therapy outcomes under his clinical supervision.

2. An occupational therapist shall not delegate the discretionary aspects of the initial assessment, evaluation or development of a treatment plan for a patient ~~to unlicensed occupational therapy personnel~~ nor shall he delegate any task requiring a clinical decision or the knowledge, skills, and judgment of a licensed occupational therapist.

3. Delegation shall only be made if, in the judgment of the occupational therapist, the task or procedures do not require the exercise of professional judgment, can be properly and safely performed by an appropriately trained ~~unlicensed occupational therapy personnel~~ occupational therapy assistant, and the delegation does not jeopardize the health or safety of the patient.

4. Delegated tasks or procedures shall be communicated to an occupational therapy assistant on a patient-specific basis with clear, specific instructions for performance of activities, potential complications, and expected results.

B. The frequency, methods, and content of supervision are dependent on the complexity of patient needs, number and diversity of patients, demonstrated competency and experience of the assistant, and the type and requirements of the practice setting. The occupational therapist providing clinical supervision shall meet with the occupational therapy personnel to review and evaluate treatment and progress of the individual patients at least once every ~~fifth~~ tenth treatment session or ~~21~~ 30 calendar days, whichever occurs first. For the purposes of this subsection, group treatment sessions shall be counted the same as individual treatment sessions.

C. An occupational therapist ~~shall not~~ may provide clinical supervision for ~~more than~~ up to six occupational therapy personnel, to include no more than three occupational therapy assistants at any one time.

D. ~~An occupational therapist shall be responsible and accountable for the services provided by occupational therapy personnel under his clinical supervision.~~ The occupational therapy assistant shall document in the patient record any aspects of the initial evaluation, treatment plan, discharge summary or other notes on patient care performed by the assistant, and the supervising occupational therapist shall review and countersign within 10 days of such information being recorded.

18VAC85-80-111. Supervision of unlicensed occupational therapy personnel.

A. Unlicensed occupational therapy personnel may be supervised by an occupational therapist or an occupational therapy assistant.

B. Unlicensed occupational therapy personnel may be utilized to perform:

1. Non-client-related tasks, including but not limited to, clerical and maintenance activities and the preparation of the work area and equipment; and

2. Certain routine patient-related tasks that, in the opinion of and under the supervision of an occupational therapist, have no potential to adversely impact the patient or the patient's treatment plan.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (18VAC85-80)

Instructions for Completing an Occupational Therapist Licensure Application (rev. 12/07).

Application for a License to Practice as an Occupational Therapist (rev. 12/07).

Instructions for Completing an Occupational Therapy Assistant Licensure Application (eff. 11/08).

Application for a License to Practice as an Occupational Therapy Assistant (eff. 11/08).

Form A, Claims History Sheet (rev. 8/07).

Form A, Occupational Therapy Assistant, Claims History Sheet (eff. 11/08).

Form B, Activity Questionnaire (rev. 8/07).

Form B, Occupational Therapy Assistant, Activity Questionnaire (eff. 11/08).

Form C, Clearance from Other State Boards (rev. 10/07).

Form C, Occupational Therapy Assistant, Clearance from Other State Boards (eff. 11/08).

Form L, Certificate of Professional Education (rev. 8/07).

Form L, Occupational Therapy Assistant, Certificate of Professional Education (eff. 11/08).

Board Approved Practice, Occupational Therapist Traineeship (rev. 8/07).

Instructions for Completing Reinstatement of Occupational Therapy Licensure (rev. 8/07).

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. 8/07).

Instructions for Supervised Practice, Occupational Therapy Reinstatement (rev. 8/07).

Supervised Practice Application, Occupational Therapy Reinstatement (rev. 8/07).

Continued Competency Activity and Assessment Form (rev. 4/00).

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/08).

VA.R. Doc. No. R09-1387; Filed October 22, 2008, 9:25 a.m.

JOINT BOARDS OF NURSING AND MEDICINE

Fast-Track Regulation

Titles of Regulations: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-10, 18VAC90-30-20, 18VAC90-30-30, 18VAC90-30-80, 18VAC90-30-85, 18VAC90-30-100, 18VAC90-30-105, 18VAC90-30-110, 18VAC90-30-120, 18VAC90-30-121, 18VAC90-30-220, 18VAC90-30-230).**

18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-10, 18VAC90-40-20, 18VAC90-40-40, 18VAC90-40-50, 18VAC90-40-55, 18VAC90-40-60, 18VAC90-40-90, 18VAC90-40-100, 18VAC90-40-130, 18VAC90-40-140; adding 18VAC90-40-121).

Statutory Authority: § 54.1-2400 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 December 10, 2008.

Effective Date: December 25, 2008.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations. Section 54.1-2957.01 of the Code of Virginia authorizes the Boards of Nursing and Medicine to jointly prescribe regulations governing the prescriptive authority of nurse practitioners.

Purpose: The purpose of the action is to clarify and update requirements pursuant to a periodic review of regulations and to reflect the collaborative nature of the practice arrangement between licensed nurse practitioners (LNP) and supervising physicians. Amendments to more clearly specify the evidence of educational qualification in a specialty category, to accept continuing medical education and to allow continuing education hours as evidence of competency to resume practice after the license has lapsed are all intended to ensure that a nurse practitioner has the appropriate knowledge and skills to practice safely. The amendments also make the requirements for maintaining a written protocol setting out the scope of the LNP's practice and for submitting a current practice agreement whenever there are significant changes in prescriptive authority. Such changes are intended to encourage compliance with law and regulation to make nurse practitioners more competent and safer in their practice.

Rationale for Using Fast-Track Process: The boards have determined that a fast-track process is appropriate because the action is primarily clarifying rather than substantive. Amendments have been drafted by a committee of nurse practitioners and physicians, approved by the Committee of the Joint Boards, the Board of Nursing and the Board of Medicine and are not expected to be controversial.

Substance: The changes to 18VAC90-30 (i) clarify certain provisions and requirements; (ii) specify the evidence of coursework leading to specialty licensure that must be submitted with an initial application; (iii) include category 1 continuing medical education in the approved courses for continuing competency requirements; (iv) allow submission of continuing education as evidence of competency for reinstatement; and (v) clarify that a copy of the written protocol must be maintained.

The changes to 18VAC90-40 (i) provide a definition of a "nonprofit health care clinic" and modify the definition of "supervision" to reflect that both the LNP and the supervising physician are responsible for the patient and for collaboration on his course of treatment; (ii) allow for "regular" rather than "monthly" chart reviews; and (iii) clarify rules for prescribing for self and family.

Issues: There is an advantage to the public of clarifying the requirements for initial licensure, renewal and reinstatement to ensure competency to practice in a specialty category of licensure. Rules that reinforce the need to maintain a written protocol and a current practice agreement for prescriptive authority also ensure collaboration with supervising physicians on patient care. There are no disadvantages to the public.

The primary advantage to the agency and the Commonwealth is greater clarity of the regulations and consistency with the Code to reduce the confusion and misinterpretation.

The only pertinent matter of interest to the regulated community is the desire to eliminate or modify the supervisory relationship of nurse practitioners and physicians to allow nurse practitioners to practice more independently. The committee that reviewed the regulations considered that issue and modified the regulation within the context of the statute. The regulated community understands that any significant changes necessitate amendments to the Code of Virginia.

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

Summary of the Proposed Amendments to Regulation. As a part of the periodic review process, the Joint Boards of Nursing and Medicine (Joint Boards) propose to amend their Regulations Governing Licensure of Nurse Practitioners and Regulations Governing Prescriptive Authority for Nurse Practitioners to make several clarifying and substantive changes. The Joint Boards propose to:

1. clarify and update regulations with current terminology and other DHP board practices,[1]

2. specify the evidence of coursework leading to specialty licensure that must be submitted with an initial application,

3. clarify that a copy of the written protocol agreement between nurse practitioners and the doctors that supervise them must be maintained, [2]

4. modify the definition of supervision to clarify that both the licensed nurse practitioner and the supervising physician are responsible for the patient and for collaboration on the patient's course of treatment,

5. provide a definition of a "nonprofit health care clinic",

6. add rules for prescribing for self and family by nurse practitioners with prescriptive authority,

7. require that one member of the Joint Boards of Nursing and Medicine (one representative from the Board of Nursing) be a nurse practitioner,

8. allow category 1 continuing medical education to be used to meet continuing competency requirements for nurse practitioners,

9. allow submission of continuing education as evidence of competency for reinstatement and

10. allow for "regular" rather than "monthly" chart reviews.

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

Estimated Economic Impact. Several of the changes that the Joint Boards propose to make as a part of the periodic review process (specifically, those encompassed by bullet points one

through five on the list above) aim to bring greater clarity to these regulations. These changes are either standing Board policy being moved to regulation or other clarifications; for example, the Joint Boards propose to add language that explicitly states that licensees may not practice with a lapsed (or otherwise invalid) license, as required by the Code of Virginia, rather than assuming that this rule is understood and does not need to be in the text of the regulations. These changes ought not represent a change in practice for regulated entities of the Joint Boards and, so, regulated entities will likely not incur any costs on account of these changes. Having these rules more clearly spelled out ought to, however, provide a benefit for individuals who are either affected by these regulations or are interested in knowing the rules under which nurse practitioners must operate.

Current regulations do not have explicit rules that nurse practitioners must follow when prescribing medication for themselves or for family members. Doctors who supervise nurse practitioners, however, do have explicit rules for such prescriptions. Currently, doctors may not prescribe any drugs, other than schedule VI drugs, unless 1) the prescribing occurs in an emergency situation or in isolated settings where there is no other qualified practitioner available to the patient, or 2) it is for a single episode of an acute illness through one prescribed course of medication. Whether prescribing schedule VI drug or prescribing other drugs in exceptional circumstances, doctors must maintain statutorily required patient records. The Joint Boards propose to amend current regulations so that rules identical to those that apply to doctors when prescribing for themselves or family members are also explicitly laid out for nurse practitioners. Current prescribing practice of nurse practitioners should already be consistent with that of supervising doctors. The Department of Health Professions (DHP) reports that, to the extent that practices between nurse practitioners and doctors now diverge, nurse practitioners may not be prescribing for themselves or family members even to the extent allowed because they erroneously believe that it is against the rules to write such prescriptions at all. To the extent that nurse practitioners are ignorant of current (Board of Medicine) rules for prescribing for self and family, this regulatory change will provide the benefit of clarity.

Current regulations direct the president of the Board of Nursing and the president of the Board of Medicine to each appoint three members to the Joint Boards of Nursing and Medicine which administers regulations for nurse practitioners. Current regulations are silent on the professional licensure of those appointed. During the last legislative session, the General Assembly mandated that at least one member of the Board of Nursing be a nurse practitioner. The Boards propose to amend these regulations to also require that one of the Board of Nursing's representatives to the Joint Boards be a nurse practitioner. This proposed change will not require a change to the current composition of the Joint Boards as two members are already nurse practitioners. There is likely a benefit in having at least one nurse practitioner on the Joint Boards as this individual (these individuals) will likely be better able to speak to how any new rulemaking activity will impact the practice of other nurse practitioners.

Current regulations require nurse practitioners to complete 40 hours of continuing education biennially and have a list of allowable sources for that continuing education. The Joint Boards propose to add American Medical Association (AMA) approved Category 1 continuing medical education to the list of approved continuing education options from which nurse practitioners may choose. No regulated entity is likely to incur any costs on account of this regulatory change. Nurse practitioners will likely benefit from this change as it will allow them a wider array of educational opportunities to choose from. This may also allow licensees to obtain required continuing education at reduced cost if additional continuing education options include some that cost less than those that are currently approved.

Current regulations require nurse practitioners who are seeking license reinstatement to submit, among other things, "evidence of current certification" (acceptable for Virginia licensure) or licensure or certification from another jurisdiction. The Joint Boards propose to add the option of providing proof of "continuing education hours taken during the period in which the license was lapsed, equal to the number required for licensure renewal during that period, not to exceed 120 hours". This proposed change will benefit nurse practitioners as it will allow greater flexibility in choosing the least costly and/or most convenient path to reinstatement should their licenses lapse.

Current regulations require that supervising physicians conduct monthly, random reviews of patient charts on which nurse practitioners (that they supervise) have entered prescriptions for approved drugs or devices. DHP notes that doctors and nurse practitioners likely engage in "on-going collaboration and consultation on patient care" that is likely as frequent as it needs to be for individual patients (at each visit for patient they see frequently or every couple of months for patients who are on maintenance medication and only see their doctors quarterly). Under those circumstances, requiring monthly records reviews likely add unnecessarily to doctors' workload and record keeping burden. The Joint Boards propose to only require random patient record review on a regular, rather than monthly, basis. This change will benefit doctors and nurse practitioners by allowing them greater freedom to agree on a schedule of random record checks that takes into account their specific patients' needs.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that the Joint Boards currently license 5,504 nurse practitioners; 3,184 of these licensees also have prescriptive authority.

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

Projected Impact on Employment. To the extent that changes to the requirements for reinstatement of licensure encourages more nurse practitioners to hold current Virginia licenses, this regulatory action may slightly increase the number of licensed nurse practitioners in the Commonwealth. Since nurse practitioners can not practice independently, this regulatory action will likely only increase employment in this field if there are currently doctors who want to have nurse practitioners in their practices but do not currently because none are available for hire.

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.

[1] For example, this includes such changes as allowing hearings to be conducted by agency subordinates, and eliminating extensions "for good cause shown" due to the inherent difficulty of enforcing such language.

[2] This provision is being inserted due to a 2007 audit in which the board found that some nurse practitioners were unaware that they were required to maintain a protocol with a supervising physician.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Boards of Nursing and Medicine concur with the analysis of the Department of Planning and Budget for the proposed amendments to 18VAC90-30, Regulations Governing the Practice of Nurse Practitioners and 18VAC90-40, Regulations Governing Prescriptive Authority for Nurse Practitioners.

Summary:

The proposed amendments (i) clarify and update regulations with current terminology and other Department of Health Professions board practices, (ii) specify the evidence of coursework leading to specialty licensure that must be submitted with an initial application, (iii) clarify that a copy of the written protocol agreement between nurse practitioners and the doctors that supervise them must be maintained, (iv) modify the definition of supervision to clarify that both the licensed nurse practitioner and the supervising physician are responsible for the patient and for collaboration on the patient's course of treatment, (v) define "nonprofit health care clinics," (vi) establish provisions for prescribing for self and family by nurse practitioners with prescriptive authority, (vii) require that one member of the Joint Boards of Nursing and Medicine (one representative from the Board of Nursing) be a nurse practitioner, (viii) allow Category 1 continuing medical education to be used to meet continuing competency requirements for nurse practitioners, (ix) allow submission of continuing education as evidence of competency for reinstatement, and (x) allow for "regular" rather than "monthly" chart reviews.

Part I
General Provisions

18VAC90-30-10. Definitions.

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

"Approved program" means a nurse practitioner education program that is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse Midwives, Commission on Collegiate Nursing Education or the National League for Nursing Accrediting Commission or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing which grant a graduate degree in nursing and which hold a national accreditation acceptable to the boards.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Controlling institution" means the college or university offering a nurse practitioner education program.

"Licensed nurse practitioner" means a registered nurse who has met the requirements for licensure as stated in Part II (18VAC90-30-60 et seq.) of this chapter.

"Licensed physician" means a person licensed by the Board of Medicine to practice medicine or ~~osteopathy~~ osteopathic medicine.

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U. S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse midwives or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Preceptor" means a physician or a licensed nurse practitioner who supervises and evaluates the nurse practitioner student.

"Protocol" means a written statement, jointly developed by the collaborating physician(s) and the licensed nurse practitioner(s), that directs and describes the procedures to be followed and the delegated medical acts appropriate to the specialty practice area to be performed by the licensed nurse practitioner(s) in the care and management of patients.

18VAC90-30-20. Delegation of authority.

A. The boards hereby delegate to the executive director of the Virginia Board of Nursing the authority to issue the initial licensure and the biennial renewal of such licensure to those persons who meet the requirements set forth in this chapter and to grant extensions or exemptions for compliance with continuing competency requirements as set forth in subsection E of 18VAC90-30-105. Questions of eligibility shall be referred to the Committee of the Joint Boards of Nursing and Medicine.

B. All records and files related to the licensure of nurse practitioners shall be maintained in the office of the Virginia Board of Nursing.

18VAC90-30-30. Committee of the Joint Boards of Nursing and Medicine.

A. The presidents of the Boards of Nursing and Medicine respectively shall each appoint three members from their boards to the Committee of the Joint Boards of Nursing and Medicine; at least one of the appointees from the Board of Nursing shall be a licensed nurse practitioner. The purpose of this committee shall be to administer the Regulations Governing the Licensure of Nurse Practitioners, 18VAC90-30-10 et seq.

B. The committee, in its discretion, may appoint an advisory committee. Such an advisory committee shall be comprised of four licensed physicians and four licensed nurse practitioners, of whom one shall be a certified nurse midwife, one shall be a certified registered nurse anesthetist and two shall be nurse practitioners from other categories. Appointment to the advisory committee shall be for four years; members may be appointed for one additional four-year period.

18VAC90-30-80. Qualifications for initial licensure.

A. An applicant for initial licensure as a nurse practitioner shall:

1. Hold a current, active license as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse;

2. Submit evidence of a graduate degree in nursing or in the appropriate nurse practitioner specialty from an educational program designed to prepare nurse practitioners that is an approved program as defined in 18VAC90-30-10. Evidence shall include a transcript that shows that the applicant has successfully completed core coursework that prepares the applicant for licensure in the appropriate specialty;

3. Submit evidence of professional certification that is consistent with the specialty area of the applicant's educational preparation issued by an agency accepted by the boards as identified in 18VAC90-30-90;

4. File the required application; and

5. Pay the application fee prescribed in 18VAC90-30-50.

B. Provisional licensure may be granted to an applicant who satisfies all requirements of this section with the exception of subdivision A 3 of this section, provided the board has received evidence of the applicant's eligibility to sit for the certifying examination directly from the national certifying body. An applicant may practice with a provisional license for either six months from the date of issuance or until issuance of a permanent license or until he receives notice that he has failed the certifying examination, whichever occurs first.

18VAC90-30-85. Qualifications for licensure by endorsement.

A. An applicant for licensure by endorsement as a nurse practitioner shall:

1. Provide verification of licensure as a nurse practitioner or advanced practice nurse in another U.S. jurisdiction with

a license in good standing, or, if lapsed, eligible for reinstatement;

2. Submit evidence of professional certification that is consistent with the specialty area of the applicant's educational preparation issued by an agency accepted by the boards as identified in 18VAC90-30-90; and

3. Submit the required application and fee as prescribed in 18VAC90-30-50.

B. An applicant shall provide evidence that includes a transcript that shows successful completion of core coursework that prepares the applicant for licensure in the appropriate specialty.

18VAC90-30-100. Renewal of licensure.

A. Licensure of a nurse practitioner shall be renewed:

1. Biennially at the same time the license to practice as a registered nurse in Virginia is renewed; or

2. If licensed as a nurse practitioner with a multistate licensure privilege to practice in Virginia as a registered nurse, a licensee born in even-numbered years shall renew his license by the last day of the birth month in even-numbered years and a licensee born in odd-numbered years shall renew his license by the last day of the birth month in odd-numbered years.

B. The ~~application for~~ renewal notice of the license shall be mailed ~~by the committee~~ to the last known address of each nurse practitioner. Failure to receive the renewal notice shall not relieve the licensee of the responsibility for renewing the license by the expiration date.

C. The licensed nurse practitioner shall ~~complete the application and return it with his signature attesting~~ attest to compliance with continuing competency requirements of current professional certification or continuing education as prescribed in 18VAC90-30-105 and the license renewal fee prescribed in 18VAC90-30-50.

D. The license shall automatically lapse if the licensee fails to renew by the expiration date. Any person practicing as a nurse practitioner during the time a license has lapsed shall be subject to disciplinary actions by the boards.

18VAC90-30-105. Continuing competency requirements.

A. In order to renew a license biennially, a nurse practitioner initially licensed on or after May 8, 2002, shall hold current professional certification in the area of specialty practice from one of the certifying agencies designated in 18VAC90-30-90.

B. In order to renew a license biennially on or after January 1, 2004, nurse practitioners licensed prior to May 8, 2002, shall meet one of the following requirements:

1. Hold current professional certification in the area of specialty practice from one of the certifying agencies designated in 18VAC90-30-90; or

2. Complete at least 40 hours of continuing education in the area of specialty practice approved by one of the certifying agencies designated in 18VAC90-30-90 or approved by Accreditation Council for Continuing Medical Education (ACCME) of the American Medical Association as a Category I Continuing Medical Education (CME) course.

C. The nurse practitioner shall retain evidence of compliance and all supporting documentation for a period of four years following the renewal period for which the records apply.

D. The boards shall periodically conduct a random audit ~~of at least 1.0%~~ of its licensees to determine compliance. The nurse practitioners selected for the audit shall provide the evidence of compliance and supporting documentation within 30 days of receiving notification of the audit.

~~E. The boards may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.~~

~~F.~~ E. The boards may delegate ~~to the committee~~ the authority to grant an extension or exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

18VAC90-30-110. Reinstatement of license.

A. A licensed nurse practitioner whose license has lapsed may be reinstated within one renewal period by payment of the current renewal fee and the late renewal fee.

B. An applicant for reinstatement of license lapsed for more than one renewal period shall:

1. File the required application and reinstatement fee;

2. Be currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse; and

3. Provide evidence of current professional competency consisting of:

a. Current professional certification by the appropriate certifying agency identified in 18VAC90-30-90;

b. Continuing education hours taken during the period in which the license was lapsed, equal to the number required for licensure renewal during that period, not to exceed 120 hours; or~~, if~~

c. If applicable, current, unrestricted licensure or certification in another jurisdiction.

C. An applicant for reinstatement of license following suspension or revocation shall:

1. Petition for ~~a~~ reinstatement and pay the reinstatement fee;

2. Present evidence that he is currently licensed as a ~~Registered Nurse~~ registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse; and

3. Present evidence that he is competent to resume practice as a licensed nurse practitioner in Virginia~~.~~ to include:

a. Current professional certification by the appropriate certifying agency identified in 18VAC90-30-90; or

b. Continuing education hours taken during the period in which the license was suspended or revoked, equal to the number required for licensure renewal during that period, not to exceed 120 hours.

The committee shall act on the petition pursuant to the Administrative Process Act, § 2.2-4000 et seq. of the Code of Virginia.

Part III
Practice of Licensed Nurse Practitioners

18VAC90-30-120. Practice of licensed nurse practitioners other than certified nurse midwives.

A. A nurse practitioner licensed in a category other than certified nurse midwife shall be authorized to engage in practices constituting the practice of medicine in collaboration with and under the medical direction and supervision of a licensed physician.

B. The practice of licensed nurse practitioners shall be based on specialty education preparation as a nurse practitioner in accordance with standards of the applicable certifying organization and written protocols as defined in 18VAC90-30-10.

C. The licensed nurse practitioner shall maintain a copy of the written protocol and shall make it available to the boards upon request. The written protocol shall include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, referral to physical therapy, and endorsements provided it is:

1. In accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician;

2. Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and

3. Not in conflict with federal law or regulation.

D. A certified registered nurse anesthetist shall practice in accordance with the functions and standards defined by the American Association of Nurse Anesthetists (Scope and Standards for Nurse Anesthesia Practice, Revised 2005) and under the medical direction and supervision of a doctor of medicine or a doctor of ~~osteopathy~~ osteopathic medicine or the medical direction and supervision of a dentist in accordance with rules and regulations promulgated by the Board of Dentistry.

E. For purposes of this section, the following definitions shall apply:

"Collaboration" means the process by which a nurse practitioner, in association with a physician, delivers health care services within the scope of practice of the nurse practitioner's professional education and experience and with medical direction and supervision, consistent with this chapter.

"Medical direction and supervision" means participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications that provide for and define consultation among the collaborating parties and the patient; and periodic joint evaluation of services provided, e.g., chart review, and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.

18VAC90-30-121. Practice of nurse practitioners licensed as certified nurse midwives.

A. A nurse practitioner licensed as a certified nurse midwife shall be authorized to engage in practices constituting the practice of medicine in collaboration and consultation with a licensed physician.

B. The practice of certified nurse midwives shall be based on specialty education preparation as a nurse practitioner and in accordance with standards of the applicable certifying organization and written protocols as defined in 18VAC90-30-10.

C. The licensed nurse practitioner shall maintain a copy of the written protocol and shall make it available to the boards upon request. The written protocol shall include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, referral to physical therapy, and endorsements provided it is:

1. In accordance with the specialty license of the nurse practitioner and within the scope of practice of the supervising physician;

2. Permitted by § 54.1-2957.02 of the Code of Virginia or applicable sections of the Code of Virginia; and

3. Not in conflict with federal law or regulation.

D. A certified nurse midwife, in collaboration and consultation with a duly licensed physician, shall practice in accordance with the Standards for the Practice of Nurse-

Midwifery (Revised 2003) defined by the American College of Nurse-Midwives.

E. For purposes of this section, the following definition shall apply:

"Collaboration and consultation" means practice in accordance with the Standards for the Practice of Midwifery (Revised 2003) defined by the American College of Nurse-Midwives to include participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications that provide for and define consultation among the collaborating parties and the patient; periodic joint evaluation of services provided; and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.

Part IV
Disciplinary Provisions

18VAC90-30-220. Grounds for disciplinary action against the license of a licensed nurse practitioner.

The boards may deny licensure or relicensure, revoke or suspend the license, or ~~place on probation, censure or reprimand a nurse practitioner~~ take other disciplinary action upon proof that the nurse practitioner:

1. Has had ~~his~~ a license or multistate privilege to practice nursing in this Commonwealth or in another jurisdiction revoked or suspended or otherwise disciplined;

2. Has directly or indirectly ~~held himself out or~~ represented ~~himself~~ to the public that ~~he~~ the nurse practitioner is a physician, or is able to, or will practice independently of a physician;

3. Has exceeded ~~his~~ the authority as a licensed nurse practitioner;

4. Has violated or cooperated in the violation of the laws or regulations governing the practice of medicine, nursing or nurse practitioners;

5. Has become unable to practice with reasonable skill and safety to patients as the result of a physical or mental illness or the excessive use of alcohol, drugs, narcotics, chemicals or any other type of material;

6. Has violated or cooperated with others in violating or attempting to violate any law or regulation, state or federal, relating to the possession, use, dispensing, administration or distribution of drugs; or

7. Has failed to comply with continuing competency requirements as set forth in 18VAC90-30-105.

18VAC90-30-230. ~~Hearings~~ Administrative proceedings.

A. The provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern proceedings on questions of violation of 18VAC90-30-220.

B. ~~The~~ Except as provided in 18VAC90-30-240, the Committee of the Joint Boards of Nursing and Medicine shall conduct all proceedings prescribed herein and shall take action on behalf of the boards.

C. When a person's license to practice nursing has been suspended or revoked by the Board of Nursing, the nurse practitioner license shall be suspended pending a hearing simultaneously with the institution of proceedings for a hearing.

D. Sanctions or other terms and conditions imposed by consent orders entered by the Board of Nursing on the license to practice nursing may apply to the nurse practitioner license, provided the consent order has been accepted by the Committee of the Joint Boards of Nursing and Medicine.

Part I
General Provisions

18VAC90-40-10. Definitions.

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

"Boards" means the Virginia Board of Medicine and the Virginia Board of Nursing.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Nonprofit health care clinics or programs" means a clinic organized in whole or in part for the delivery of health care services without charge or when a reasonable minimum fee is charged only to cover administrative costs.

"Nurse practitioner" means a registered nurse who has met the ~~additional~~ requirements ~~of education and examination for licensure as a nurse practitioner in the Commonwealth~~ for licensure as a nurse practitioner as stated in 18VAC90-30.

"Practice agreement" means a written agreement jointly developed by the supervising physician and the nurse practitioner that describes and directs the prescriptive authority of the nurse practitioner.

"Supervision" means that the physician documents being readily available for medical consultation ~~by~~ with the licensed nurse practitioner or the patient, with the physician ~~maintaining ultimate responsibility~~ collaborating with the nurse practitioner for the agreed-upon course of treatment and medications prescribed.

18VAC90-40-20. Authority and administration of regulations.

A. The statutory authority for this chapter is found in §§ 54.1-2957.01, 54.1-3303, 54.1-3401, and 54.1-3408 of the Code of Virginia.

B. Joint boards of nursing and medicine.

1. The Committee of the Joint Boards of Nursing and Medicine shall be appointed to administer this chapter governing prescriptive authority.

2. The boards hereby delegate to the Executive Director of the Virginia Board of Nursing the authority to issue the initial authorization and biennial renewal to those persons who meet the requirements set forth in this chapter and to grant extensions or exemptions for compliance with continuing competency requirements as set forth in subsection E of 18VAC90-40-55. Questions of eligibility shall be referred to the committee.

3. All records and files related to prescriptive authority for nurse practitioners shall be maintained in the office of the Board of Nursing.

18VAC90-40-40. Qualifications for initial approval of prescriptive authority.

An applicant for prescriptive authority shall meet the following requirements:

1. Hold a current, unrestricted license as a nurse practitioner in the Commonwealth of Virginia; and

2. Provide evidence of one of the following:

a. Continued professional certification as required for initial licensure as a nurse practitioner; or

b. Satisfactory completion of a graduate level course in pharmacology or pharmacotherapeutics obtained as part of the nurse practitioner education program within the five years prior to submission of the application; or

c. Practice as a nurse practitioner for no less than 1000 hours and 15 continuing education units related to the area of practice for each of the two years immediately prior to submission of the application; or

d. Thirty contact hours of education in pharmacology or pharmacotherapeutics acceptable to the boards taken within five years prior to submission of the application. The 30 contact hours may be obtained in a formal academic setting as a discrete offering or as noncredit continuing education offerings and shall include the following course content:

(1) Applicable federal and state laws;

(2) Prescription writing;

(3) Drug selection, dosage, and route;

(4) Drug interactions;

(5) Information resources; and

(6) Clinical application of pharmacology related to specific scope of practice.

3. Submit a practice agreement between the nurse practitioner and the supervising physician as required in 18VAC90-40-90 ~~of this chapter~~. The practice agreement must be approved by the boards prior to issuance of prescriptive authority; and

4. File a completed application and pay the fees as required in 18VAC90-40-70 ~~of this chapter~~.

18VAC90-40-50. Renewal of prescriptive authority.

An applicant for renewal of prescriptive authority shall:

1. Renew biennially at the same time as the renewal of licensure to practice as a nurse practitioner in Virginia.

2. Submit a completed renewal ~~application along with his signature~~ form attesting to compliance with continuing competency requirements set forth in 18VAC90-40-55 and the renewal fee as prescribed in 18VAC90-40-70.

~~3. Submit a new practice agreement which meets the requirements of 18VAC90-40-90 with the renewal application if there has been a change since the last practice agreement was filed.~~

18VAC90-40-55. Continuing competency requirements.

A. In order to renew prescriptive authority, a licensee shall meet continuing competency requirements for biennial renewal as a licensed nurse practitioner. Such requirements shall address issues such as ethical practice, an appropriate standard of care, patient safety, and appropriate communication with patients.

B. ~~In addition to the minimal requirements for compliance with subsection B of 18VAC90-30-105, a~~ A nurse practitioner with prescriptive authority shall obtain a total of eight hours of continuing education in pharmacology or pharmacotherapeutics for each biennium in addition to the minimal requirements for compliance with subsection B of 18VAC90-30-105.

C. The nurse practitioner with prescriptive authority shall retain evidence of compliance and all supporting documentation for a period of four years following the renewal period for which the records apply.

D. The boards shall periodically conduct a random audit of ~~at least 1.0% of~~ its licensees to determine compliance. The nurse practitioners selected for the audit shall provide the evidence of compliance and supporting documentation within 30 days of receiving notification of the audit.

~~E. The boards may grant an extension of the deadline for continuing competency requirements for up to one year for~~

~~good cause shown upon a written request from the licensee prior to the renewal date.~~

~~F.~~ E. The boards may delegate to the committee the authority to grant an extension or an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

18VAC90-40-60. Reinstatement of prescriptive authority.

A. A nurse practitioner whose prescriptive authority has lapsed may reinstate within one renewal period by payment of the current renewal fee and the late renewal fee.

B. A nurse practitioner who is applying for reinstatement of lapsed prescriptive authority after one renewal period shall:

1. File the required application and a new practice agreement ~~as required for renewal in 18VAC90-40-50~~;

2. Provide evidence of a current, unrestricted license to practice as a nurse practitioner in Virginia;

3. Pay the fee required for reinstatement of a lapsed authorization as prescribed in 18VAC90-40-70; and

4. If the authorization has lapsed for a period of two or more years, the applicant shall provide proof of:

a. Continued practice as a licensed nurse practitioner with prescriptive authority in another state; or

b. Continuing education, in addition to the minimal requirements for current professional certification, consisting of four contact hours in pharmacology or pharmacotherapeutics for each year in which the prescriptive authority has been lapsed in the Commonwealth, not to exceed a total of 16 hours.

C. An applicant for reinstatement of suspended or revoked authorization shall:

1. ~~Request a hearing pursuant to the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) to be held before the committee~~ Petition for reinstatement and pay the fee for reinstatement of a suspended or revoked authorization as prescribed in 18VAC90-40-70;

2. Present evidence of competence to resume practice as a nurse practitioner with prescriptive authority; and

~~3. Pay the fee for reinstatement of a suspended or revoked authorization as prescribed in 18VAC90-40-70; and~~

~~4.~~ 3. Meet the qualifications and resubmit the application required for initial authorization in 18VAC90-40-40.

Part III
Practice Requirements

18VAC90-40-90. Practice agreement.

A. A nurse practitioner with prescriptive authority may prescribe only within the scope of a written practice agreement with a supervising physician to be submitted with the initial application for prescriptive authority.

B. ~~A new practice agreement shall be submitted: 1. With the initial application for prescriptive authority; or 2. With the application for each biennial renewal, if~~ At any time there ~~have been any~~ are changes in ~~supervision~~ the primary supervising physician, authorization to prescribe, or scope of practice~~; or 3. At any time a change in the primary supervising physician shall occur~~, the nurse practitioner shall submit a revised practice agreement to the board.

C. The practice agreement shall contain the following:

1. A description of the prescriptive authority of the nurse practitioner within the scope allowed by law and the practice of the nurse practitioner.

2. An authorization for categories of drugs and devices within the requirements of § 54.1-2957.01 of the Code of Virginia.

3. The signatures of the primary supervising physician and any secondary physician who may be regularly called upon in the event of the absence of the primary physician.

18VAC90-40-100. Supervision and site visits.

A. In accordance with § 54.1-2957.01 of the Code of Virginia, physicians who enter into a practice agreement with a nurse practitioner for prescriptive authority shall supervise and direct, at any one time, no more than four nurse practitioners with prescriptive authority.

B. Except as provided in subsection C of this section, physicians shall regularly practice in any location in which the licensed nurse practitioner exercises prescriptive authority.

1. A separate practice setting may not be established for the nurse practitioner.

2. A supervising physician shall conduct a ~~monthly~~ regular, random review of patient charts on which the nurse practitioner has entered a prescription for an approved drug or device.

C. Physicians who practice with a certified nurse midwife or with a nurse practitioner employed by or under contract with local health departments, federally funded comprehensive primary care clinics, or nonprofit health care clinics or programs shall:

1. Either regularly practice at the same location with the nurse practitioner or provide supervisory services to such

separate practices by making regular site visits for consultation and direction for appropriate patient management. The site visits shall occur in accordance with the protocol, but no less frequently than once a quarter.

2. Conduct a ~~monthly~~ regular, random review of patient charts on which the nurse practitioner has entered a prescription for an approved drug or device.

18VAC90-40-121. Prescribing for self or family.

A. Treating or prescribing shall be based on a bona fide practitioner-patient relationship, and prescribing shall meet the criteria set forth in § 54.1-3303 of the Code of Virginia.

B. A nurse practitioner shall not prescribe a controlled substance to himself or a family member, other than Schedule VI as defined in § 54.1-3455 of the Code of Virginia, unless the prescribing occurs in an emergency situation or in isolated settings where there is no other qualified practitioner available to the patient, or it is for a single episode of an acute illness through one prescribed course of medication.

C. When treating or prescribing for self or family, the nurse practitioner shall maintain a patient record documenting compliance with statutory criteria for a bona fide practitioner-patient relationship.

Part IV
Discipline

18VAC90-40-130. Grounds for disciplinary action.

The boards may deny approval of prescriptive authority, revoke or suspend authorization, or take other disciplinary actions against a nurse practitioner who:

1. Exceeds his authority to prescribe or prescribes outside of the written practice agreement with the supervising physician;

2. Has had his license as a nurse practitioner suspended, revoked or otherwise disciplined by the boards pursuant to 18VAC90-30-220 ~~and 18VAC85-70-220~~;

3. Fails to comply with requirements for continuing competency as set forth in 18VAC90-40-55.

18VAC90-40-140. ~~Hearings~~ Administrative proceedings.

A. ~~The~~ Except as provided for delegation of proceedings to an agency subordinate in 18VAC90-30-240, the Committee of the Joint Boards of Nursing and Medicine shall conduct all hearings prescribed herein and shall take action on behalf of the boards.

B. The ~~provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern proceedings on questions of violation of 18VAC90-40-130~~ nurse practitioner with prescriptive authority shall be subjective to the grounds for disciplinary action set forth in 18VAC90-30-220.

C. When the license of a nurse practitioner has been suspended or revoked by the joint boards, prescriptive authority shall be suspended pending a hearing simultaneously with the institution of proceedings for a hearing.

D. Any violation of law or of this chapter may result in disciplinary action including the revocation or suspension of prescriptive authority and may also result in additional sanctions imposed on the license of the nurse practitioner by the joint boards or upon the license of the registered nurse by the Board of Nursing.

VA.R. Doc. No. R09-1299; Filed October 22, 2008, 9:25 a.m.

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TITLE 19. PUBLIC SAFETY

VIRGINIA FIRE SERVICES 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: **19VAC15-10. Guidelines for Public Participation in Regulation Development and Promulgation (repealing 19VAC15-10-10 through 19VAC15-10-50).**

19VAC15-11. Public Participation Guidelines (adding 19VAC15-11-10 through 19VAC15-11-110).

Statutory Authority: §§ 2.2-4007.02 and 9.1-203 of the Code of Virginia.

Effective Date: December 10, 2008.

Agency Contact: Brook M. Pittinger, Policy, Planning and Legislative Manager, Department of Fire Programs, 1005 Technology Park Drive, Glen Allen, VA 23509, telephone (804) 371-0220, FAX (804) 371-3444, or email brook.pittinger@vdfp.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 actions; (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

19VAC15-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Virginia Fire Services 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).

19VAC15-11-20. 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 Virginia Fire Services 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

19VAC15-11-30. 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.

19VAC15-11-40. 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 19VAC15-11-30, 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 reproposed, 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

19VAC15-11-50. 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 reproposed 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.

19VAC15-11-60. 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.

19VAC15-11-70. 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.

19VAC15-11-80. 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.

19VAC15-11-90. 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.

19VAC15-11-100. 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.

19VAC15-11-110. 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. R09-1498; Filed October 22, 2008, 8:09 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR THE AGING

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: **22VAC5-10. Public Participation Guidelines (repealing 22VAC5-10-10 through 22VAC5-10-110).**

22VAC5-11. Public Participation Guidelines (adding 22VAC5-11-10 through 22VAC5-11-110).

Statutory Authority: §§ 2.2-4007.02 and 2.2-700 of the Code of Virginia.

Effective Date: January 1, 2009.

Agency Contact: Janet James, Esquire, Legal Services Developer, Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-7049, FAX (804) 662-9354, or email janet.james@vda.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 actions; (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

22VAC5-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department for the Aging. 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).

22VAC5-11-20. 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 for the Aging, 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

22VAC5-11-30. 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.

22VAC5-11-40. 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 22VAC5-11-30, 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 reproposed, 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

22VAC5-11-50. 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 reproposed 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.

22VAC5-11-60. 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.

22VAC5-11-70. 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.

22VAC5-11-80. 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.

22VAC5-11-90. 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.

22VAC5-11-100. 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.

22VAC5-11-110. 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. R09-1500; Filed October 21, 2008, 8:39 a.m.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

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: **22VAC45-11. Public Participation Guidelines (repealing 22VAC45-11-10 through 22VAC45-11-90).**

22VAC45-12. Public Participation Guidelines (adding 22VAC45-12-10 through 22VAC45-12-110).

Statutory Authority: §§ 2.2-4007.02 and 51.5-65 of the Code of Virginia.

Effective Date: December 1, 2008.

Agency Contact: Eva F. Ampey, Special Assistant to the Commissioner, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3110, FAX (804) 371-3157, TTY (804) 371-3140, or email eva.ampey@dbvi.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 actions; (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 12
PUBLIC PARTICIPATION GUIDELINES

Part I
Purpose and Definitions

22VAC45-12-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department for the Blind and Vision Impaired. 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).

22VAC45-12-20. 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 for the Blind and Vision Impaired, 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

22VAC45-12-30. 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.(REPEALED)

22VAC45-12-40. 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 22VAC45-12-30, 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 reproposed, 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

22VAC45-12-50. 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 reproposed 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.

22VAC45-12-60. 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.

22VAC45-12-70. 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.

22VAC45-12-80. 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.

22VAC45-12-90. 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.

22VAC45-12-100. 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.

22VAC45-12-110. 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. R09-1506; Filed October 22, 2008, 12:02 p.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Forms

NOTICE: The following forms have been filed by the Department of Taxation. The forms are available for public inspection at the Department of Taxation, 3610 West Broad Street, Richmond, VA 23230, 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 Jennifer Lewis, Policy Analyst, Department of Taxation, P. O. Box 27185, Richmond, VA 23261-7185, telephone 804, 371-2341 or email jennifer.lewis@tax.virginia.gov.

Titles of Regulations: **23VAC10-20. General Provisions Applicable to All Taxes Administered by the Department of Taxation.**

23VAC10-55. Virginia Corn Excise Tax.

23VAC10-60. Virginia Egg Excise Tax.

23VAC10-65. Virginia Peanut Excise Tax.

23VAC10-75. Virginia Soybean Excise Tax Regulations.

23VAC10-220. Aircraft Sales and Use Tax.

23VAC10-230. Watercraft Sales and Use Tax.

23VAC10-300. Estate Tax.

23VAC10-310. Tax on Wills and Administration.

23VAC10-330. Bank Franchise Tax.

23VAC10-350. Forest Products Tax Regulations.

23VAC10-370. Cigarette Tax Regulations.

23VAC10-390. Virginia Soft Drink Excise Tax Regulations.

FORMS (23VAC10-20)

Power of Attorney and Declaration of Representation, PAR 101 (rev. 6/06).

Offer in Compromise Business Request for Settlement, OIC-Bus (eff. 11/08).

Offer in Compromise Individual Request for Settlement, Form 21 OIC-Ind (eff. 11/08).

FORMS (23VAC10-55)

Virginia Corn Assessment Return Instructions, Form ~~CT-1 (eff. 7/91)~~ CO-AR W (rev. 5/06).

Business Registration Application, Form ~~R-2~~ R-1 (rev. 3/08).

FORMS (23VAC10-60)

Virginia Egg Excise ~~Assessment~~ Tax Return, Form EG-1 ~~(eff. 6/94)~~ (rev. 5/06).

Worksheet for Virginia Egg Board and Conversion Calculations for Egg Products, Form EG-2 ~~(eff. 6/94)~~ (rev. 5/05).

Business Registration Application, Form R-1 ~~R-2~~ (rev. 3/08).

FORMS (23VAC10-65)

Virginia Peanut Excise Tax Return, Form PN-1 (rev. 5/06).

Business Registration Application, Form R-1 (rev. 3/08).

FORMS (23VAC10-75)

~~Federal Soybean Promotion, Research and Consumer Assessment Report.~~

Business Registration Application, Form R-1 ~~R-2~~ (rev. 3/08).

FORMS (23VAC10-220)

~~Application for Dealer Exclusion Under the Virginia Aircraft Sales and Use Tax Act, Form AST-1 (eff. 1/92).~~

Dealer's Aircraft Sales and Use Tax Return, Form AST-2 ~~(eff. 5/91)~~ (rev. 5/06).

Virginia Aircraft Sales and Use Tax Return, Form AST-3 ~~(eff. 6/84)~~ (rev. 12/06).

Sales and Use Tax Certificate of Exemption (For dealers who purchase tangible personal property for resale, lease or rental), Form ST-10 (rev. 10/99).

Business Registration Application, Form R-1 (rev. 3/08).

FORMS (23VAC10-230)

~~Dealer's Application for Certificate of Registration, Form WCT-1.~~

Virginia Watercraft Sales and Use Tax Return, Form WCT-2 ~~(eff. 10/90)~~ (rev. 7/05).

~~Dealer's Work Sheet for Computing~~ Virginia Watercraft Sales ~~and/or~~ and Use Tax Work Sheet, Form WCT-2A ~~(eff. 10/92)~~ (rev. 10/04).

~~Virginia Watercraft Sales Tax Receipt, Form WCT-3.~~

Individual Watercraft Tax Worksheet, Form WCT-3A ~~(eff. 5/91)~~ (rev. 9/97).

~~Consumer's Application for Refund, Form WCT-REFUND.~~

Sales and Use Tax Certificate of Exemption (For dealers who purchase tangible personal property for resale, lease or rental), Form ST-10 (rev. 10/99).

Business Registration Application, Form R-1 (rev. 3/08).

FORMS (23VAC10-300)

Virginia Estate Tax Return, Form EST-80 ~~(eff. 4/94)~~ (rev. 3/07).

FORMS (23VAC10-310)

Probate Tax Return, Form PT-1 ~~(eff. 6/94)~~ (rev. 6/03).

FORMS (23VAC10-330)

Virginia Bank Franchise Tax 2008, Form 64, Schedules and Instructions (rev. 12/07).

Enterprise Zone Credit, State Bank Franchise Tax, Form 301 (rev. 10/06).

FORMS (23VAC10-350)

Virginia Forest Products Tax Return, Form 1034 (rev. 8/05).

Forest Products Tax Return ~~(Small Manufacturers and Certain Small Severers)~~, Small Manufacturers and Certain Small Severers, Form 1035 (rev. 3/05).

~~Registration Application, Form R-2.~~

Business Registration Application, Form R-1 (rev. 3/08).

FORMS (23VAC10-370)

~~Application to Purchase and Affix Virginia Tobacco Revenue Stamps.~~

~~Permit to Purchase and Affix Virginia Tobacco Revenue Stamps~~ Application for Cigarette Stamping Permit and Tobacco Products Tax Distributor's License, Form TT-1 ~~(eff. 2/80)~~ (rev. 9/07).

Order for Virginia Cigarette Tax Stamps ~~and Meter Setting~~, Form TT-2 ~~(eff. 1/93)~~ (rev. 8/06).

~~Statement of Virginia Cigarette Tax Stamps Sold and Meter Setting, Form TT-3 (eff. 10/93).~~

~~Report of Virginia Tobacco Tax Meter Setting~~ Virginia Consumer Cigarette Tax Return, Form TT-7 (rev. 9/06).

~~Cigarette Tax Credit, Form TT-9 (eff. 3/91).~~

~~Statement of Basis for Tobacco Tax Credit Certificate, Form TT-10 (eff. 5/81).~~

Virginia Application for Tobacco Tax Credit Certificate, Form TT-12 ~~(eff. 6/92)~~ (rev. 8/06).

Monthly Report of ~~Resident Cigarette Wholesaler~~ Cigarette Stamping Agent, Form TT-13 ~~(eff. 8/85)~~ (rev. 2/07).

Monthly Report of Non-Resident Cigarette ~~Wholesaler~~ Stamping Agent, Form TT-14 ~~(eff. 3/94)~~ (rev. 2/07).

Monthly Report of Cigarette Manufacturer, TT-18 (rev. 11/05).

FORMS (23VAC10-390)

Soft Drink Excise Tax Return, Form 404 ~~(eff. 5/91)~~ (rev. 9/05).

VA.R. Doc. No. R09-1560; Filed October 8, 2008, 12:38 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Commonwealth Transportation Board is exempt from the Administrative Process Act in accordance with § 2.2-4002 B 3 of the Code of Virginia, which exempts regulations relating to the location, design, specifications or construction of public buildings or other facilities.

Title of Regulation: **24VAC30-380. Public Hearings for Location and Design of Highway Construction Projects (amending 24VAC30-380-10).**

Statutory Authority: §§ 33.1-12 and 33.1-18 of the Code of Virginia.

Effective Date: October 22, 2008.

Agency Contact: Mohammad Mirshahi, P.E., State Location and Design Engineer, Department of Transportation, Location & Design Division, 1401 East Broad Street, 7th Floor Annex, Richmond, VA 23219, telephone (804) 786-2507, FAX (804) 786-5157, or email m.mirshahi.@vdot.virginia.gov.

Summary:

This regulation establishes the general provisions VDOT will follow when presenting its project-related plans, studies, and technical data for public comment, such as rules for implementing the regulation, types of hearings required for different road systems, and exceptions to public hearing requirements. Generally, the amendments have been made to improve the clarity of the regulation, to update statutory references, and to bring the regulation into line with VDOT public hearing policies.

An existing statutory requirement concerning the holding of public hearings when unpaved secondary roads need emergency paving has been added. A provision concerning the types of public hearings that can be held for projects with insignificant public interest or environmental impacts has been amended to eliminate discretion as to what action can be taken. New text explicitly mentioning notices and conditions satisfying public hearing requirements have been added to 24VAC30-380-10 B 4. VDOT has also added new text explicitly stating the agency's commitment to hold a design public hearing in response to a request related to a notice of willingness, should issues raised in connection with the request be unresolvable through other means.

24VAC30-380-10. ~~Policy, rules, and exclusions from the public hearing process~~ General provisions.

A. In the development of highway construction projects, VDOT shall consider a wide range of factors and opportunity shall be allowed for consideration and participation by public and private interests before final approval of highway locations or designs, or both. A public hearing ~~held pursuant to § 33.1-18 of the Code of Virginia~~ is a well-publicized opportunity for VDOT to present ~~its~~ studies and ~~policies~~ projects while receiving and documenting comments from affected or interested citizens. ~~Such hearings will be held in compliance with § 51.5-40 of the Code of Virginia relating to participation by the disabled in state programs or activities.~~

~~B. In the development of any project, VDOT shall consider a wide range of factors, and shall allow full opportunity for consideration and participation by public and private interests before final approval of highway locations and designs.~~

~~C.~~ B. These are the rules that apply to the implementation of ~~the policy.~~ this regulation:

1. A notice to hold a public hearing or the willingness to hold a public hearing must be stated in public advertisement.

2. All public hearings should be scheduled approximately 60 days in advance. Advertisements must appear 30 days prior to the hearing.

3. The public involvement process must be held in accordance with applicable federal and state statutes and regulations, including §§ 33.1-18, 33.1-70.2 and 51.5-40 of the Code of Virginia, 23 USC § 128, 23 CFR Part 771, and 40 CFR Parts 1500-1508~~, and the provisions of the VDOT Public Involvement Policy and Procedure Manual, issued 1999~~.

4. The publication of a notice of willingness to hold a ~~location~~ public hearing, ~~design public hearing, or a combined public hearing~~ with no public request for such a hearing by the established expiration date in the notice, or conducting a public hearing pursuant to subsection C of this section will satisfy any public hearing requirements.

~~D.~~ C. If the system is interstate, primary, urban, or secondary, the following types of hearings will be held for the following project categories:

1. Projects on proposed roadway corridors, which are ~~predominantly or~~ completely on new location, require a location public hearing followed by a design public hearing.

2. Projects ~~with work~~ within the existing roadway corridor~~, but~~ with a predominant portion of the work on new location~~,~~ require a combined location and design public hearing.

3. Projects within the existing roadway corridor~~, but~~ that have a significant social, economic or environmental impact~~,~~ require a design public hearing.

4. Projects within the existing roadway corridor where insignificant public interest or environmental impacts, or both, are anticipated require ~~a combined location and design public hearing or a posting~~ publication of a notice of willingness to hold a ~~combined location and~~ design public hearing. VDOT will hold a design public hearing if a request for such a hearing is made, and the issues raised in relation to the request cannot be resolved through any other means.

~~E. Exclusions~~ D. Exceptions from the public hearing process. ~~1.~~ Hearing processes are not required for emergency projects, as well as those that are solely for highway maintenance or operational improvements, or both, except when they:

1. Involve emergency paving of unpaved secondary roads pursuant to § 33.1-70.2 of the Code of Virginia;

~~a.~~ 2. Require the acquisition of additional right of way;

~~b.~~ 3. Would have an unfavorable effect upon abutting real property; or

~~c.~~ 4. Would change the layout or function of connecting ~~roads~~ roadways or ~~streets~~ of the facility being improved.

~~2. Concurrence by the Federal Highway Administration (FHWA) must be secured on projects receiving federal participation for any phase, except emergency situations.~~

E. The Commonwealth Transportation Commissioner or his designee shall establish administrative procedures to assure the adherence to and compliance with the provisions of this regulation.

DOCUMENTS INCORPORATED BY REFERENCE (24VAC30-380) (Repealed.)

~~Policy Manual for Public Participation in Transportation Projects, 1999, Virginia Department of Transportation.~~

VA.R. Doc. No. R09-1644; Filed October 22, 2008, 9:26 a.m.

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

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: **24VAC35-10. Public Participation Guidelines (repealing 24VAC35-10-10 through 24VAC35-10-70).**

24VAC35-11. Public Participation Guidelines (adding 24VAC35-11-10 through 24VAC35-11-110).

Statutory Authority: §§2.2-4007.02 and 18.2-271.2 of the Code of Virginia.

Effective Date: December 10, 2008.

Agency Contact: Richard L. Foy, Technical Instructor, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email rfoy.vasap@state.va.us.

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 actions; (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

24VAC35-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Commission on the Virginia Alcohol Safety Action Program. 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).

24VAC35-11-20. 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 Commission on the Virginia Alcohol Safety Action Program, 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

24VAC35-11-30. 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.

24VAC35-11-40. 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 24VAC35-11-30, 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 reproposed, 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

24VAC35-11-50. 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 reproposed 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.

24VAC35-11-60. 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.

24VAC35-11-70. 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.

24VAC35-11-80. 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.

24VAC35-11-90. 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.

24VAC35-11-100. 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.

24VAC35-11-110. 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. R09-1513; Filed October 14, 2008, 10:39 a.m.

EXECUTIVE ORDER NUMBER 78 (2008)

DESIGNATION OF HOUSING CREDIT AGENCY UNDER THE FEDERAL TAX REFORM ACT OF 1986

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Chapter 1 of Title 2.2 and Section 15.2-5005 of the Code of Virginia and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct that the additional tax exempt housing bond authority provided to the Commonwealth of Virginia under the federal Housing and Economic Recovery Act of 2008 be distributed as follows:

1. An amount equal to 76 percent of Virginia's additional housing bond authority will be divided between local housing authorities and the Virginia Housing Development Authority. The bond issuing authority to these issuers shall be distributed as follows:

Recipient	Portion of Additional Housing Bond Authority
Local Housing Authorities	19 percent
Virginia Housing Development Authority	57 percent
Total	76 percent

2. An amount equal to 24 percent of Virginia's additional housing bond authority will be distributed to the "State Allocation", an amount set aside for bond issuing authorities for allocations for housing purposes as determined by the Governor.

The Housing and Economic Recovery Act (the "Act"), adopted by the United States Congress and signed by the President, authorizes a temporary additional amount of tax-exempt housing bond authority for each state to use for single-family and multifamily housing purposes. The Act imposes a ceiling on the aggregate amount of the additional housing bond authority each state may allocate to qualified housing projects.

All other laws of the Commonwealth relating to the issuance of private activity bonds, including but not limited to Chapter 50 of Title 15.2 of the Code of Virginia and Executive Order Number 68, and private activity bond guidelines administered by the Department of Housing and Community Development shall remain in effect.

This Executive Order shall be effective upon its signing, and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 7th day of October, 2008.

/s/ Timothy M. Kaine
Governor

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 16, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2008-00373

Ex Parte: In re: database inquiry fee

ORDER ESTABLISHING DATABASE INQUIRY FEE

Pursuant to subdivision B 4 of § 6.1-453.1 of the Code of Virginia and 10 VAC 5-200-115, which shall become effective on January 1, 2009, every payday lender licensed under Chapter 18 of Title 6.1 of the Code of Virginia ("licensee") is required to pay a database inquiry fee to defray the cost of submitting an inquiry to the payday lending database. 10VAC5-200-115 provides that the amount of the fee shall not exceed $5.00 per loan.

Based on the information and documentation provided to the State Corporation Commission ("Commission") by the database provider, Veritec Solutions, LLC, the Commission finds that the amount of the database inquiry fee should be $0.68 per consummated payday loan, and that such amount bears a reasonable relationship to the actual cost of operating the database.

THEREFORE IT IS ORDERED THAT:

(1) Beginning on January 1, 2009, every licensee shall pay a database inquiry fee of $0.68 per consummated payday loan; and

(2) All database inquiry fees shall be remitted by each licensee directly to Veritec Solutions, LLC, on a weekly basis.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Commissioner of Financial Institutions, who shall mail a copy of this Order to all licensed payday lenders.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order - Stanley Martin Companies, LLC

An enforcement action has been proposed for Stanley Martin Companies, LLC, for alleged violations in Prince William County associated with the Coles Run Manor development project. The consent order describes a settlement to resolve unpermitted impacts taken to intermittent stream channel associated with the Coles Run Manor development project. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email, sabellotti@deq.virginia.gov, FAX (703) 583-3821, or postal mail, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from November 11, 2008, through December 11, 2008.

Proposed Consent Order - Norman Woods

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a facility in Montgomery County, Virginia.

Public comment period: November 11, 2008, through December 10, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to Norman Woods, to address alleged violations of Virginia's regulations. The location of the facility where the alleged violation occurred is approximately three miles southwest of Ironto off North Fork Road (Tax Map ID Number 070-A5) in Montgomery County. The consent order describes a settlement to resolve violations involving construction activities without a permit affecting state waters for wetlands and stream identified as Falls Hollow.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Steven B. Wright, Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6792, FAX (540) 562-6725, or email sbwright@deq.virginia.gov.

Total Maximum Daily Load - Four Mile Run

Announcement of a total maximum daily load (TMDL) study to restore water quality in the bacteria impaired portion of tidal Four Mile Run.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce the first public meeting to introduce the Tidal Four Mile Run Bacteria TMDL study.

Public meeting: Wednesday, November 19, 2008, from 7 p.m. to 8 p.m., Fairlington Community Center, Multipurpose Room 134, 3308 South Stafford Street, Arlington, VA 22206.

Meeting description: This is the first meeting to introduce this project to the public. The purpose of this meeting is to gather information and discuss the study with community members.

Description of study: The tidal portion of Four Mile Run has been identified as impaired on the Clean Water Act § 303(d) list for not supporting the primary contact recreation use due to elevated levels of E. coli bacteria. Virginia agencies are working to identify the sources of bacteria contamination in this stream segment. The impaired segment of Four Mile Run is located in Arlington County. The Four Mile Run watershed covers parts of the City of Alexandria, City of Falls Church, Arlington County, and Fairfax County. Below is a description of the impaired portion of Four Mile Run that will be addressed in this study:

Stream Name	Locality	Impairments	Area (mi^2)	Upstream Limit	Downstream Limit
Four Mile Run	Arlington County	Recreational use impairment due to E. coli bacteria	0.0516	Tidal waters of Four Mile Run, approximately 1.46 rivermiles upstream from the mouth of the river	Confluence with the Potomac River

This study will focus on the tidal portion of Four Mile Run. A Bacteria TMDL for the nontidal portion of Four Mile Run was completed in 2002. During this study, DEQ will develop a total maximum daily load, or a TMDL, for the impaired stream segment. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the public meeting will extend from November 19, 2008, to December 19, 2008. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, or email mkconaway@deq.virginia.gov.

DEPARTMENT OF HEALTH

Preventive Health and Health Service (PHHS) Block Grant Public Hearing Notice

Notice of intent to hold a public hearing for the fiscal year 2009 regarding the Preventive Health and Health Service (PHHS) Block Grant. All interested individuals and groups are invited to participate at the public hearing on the PHHS Block Grant. In accordance with Title XIX, § 1905 of the Public Health Service Act, the Commonwealth of Virginia hereby gives notice that Virginia Department of Health will apply for FY 2009 PHHS Block Grant funds for programs addressing Healthy People 2010 national health objectives.

The public hearing will be held on Thursday, November 20, 2008, from 10 a.m. to 11 a.m. at Virginia Department of Health, 109 Governor Street, Room 715, Richmond, Virginia. The state plan is available on the agency's website at www.vahealth.org. Public comment on the application can be made at the public hearing and written comments can be addressed to Robin Buskey, Office of Family Health Services, Virginia Department of Health, P.O. Box 2448, Room 721, Richmond, VA 23218.

Contact Information: Robin Buskey, Grants Coordinator, Virginia Department of Health, P.O. Box 2448, Room 721, Richmond, VA 23218, telephone (804) 864-7663, FAX (804) 864-7647, or email robin.buskey@vdh.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on October 14, 2008, October 16, 2008, and October 22, 2008. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Fifty-Two (08)

Virginia's Instant Game Lottery 1072; "WPT®$100,000 Hold'em Poker" (effective 10/13/08)

Director's Order Number Fifty-Three (08)

Virginia's Instant Game Lottery 1082; "Holiday Treasurers" (effective 10/16/08)

Director's Order Number Fifty-Four (08)

Virginia's Instant Game Lottery 1083; "EZ Grand" (effective 10/16/08)

Director's Order Number Sixty-Three (08)

"World Poker Tour®$100,000 Hold'em Poker Sweepstakes" (effective 10/07/08)

Director's Order Number Sixty-Four (08)

Virginia's Instant Game Lottery 1076; "Win For Life" (effective 10/13/08)

Director's Order Number Sixty-Five (08)

Virginia's Seventeenth On-Line Lottery Game; "Fast Play Super 7's" (effective 10/19/08)

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Proposed Consent Special Order - Russell County Development Group, LLC (RCDG)

Purpose of notice: To seek public comment on the terms of a proposed consent special order (order) issued to Russell County Development Group, LLC (RCDG).

Public comment period: November 10, 2008, through December 9, 2008.

Summary of proposal: The proposed order describes a settlement between the board and RCDG to resolve alleged past violations of the Virginia Stormwater Management Act and Regulations at a construction project near Lebanon in Russell County, Virginia. RCDC has agreed to pay a civil charge of $9,500.

How to comment: The Virginia Department of Conservation and Recreation 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 before the end of the comment period. A copy of the proposed order is available upon request.

How to request a copy of the proposed order: Contact Edward A. Liggett, Virginia Department of Conservation and Recreation, 900 Natural Resources Drive, Suite 800-DCR, Charlottesville, VA 22903, telephone (434) 220-9067, FAX (804) 786-1798, or email ed.liggett@dcr.virginia.gov.

Contact Information: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 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

Virginia Clean Water Revolving Loan Fund for FY 2009

Purpose of notice: To announce a meeting held by the Virginia Department of Environmental Quality to discuss the use of the Virginia Clean Water Revolving Loan Fund for FY 2009.

Community meeting: Department of Environmental Quality's Conference Room, 629 East Main Street, Richmond, VA 23219, on Thursday, November 20, 2008, at 2 p.m.

Topic of meeting: Section 606(c) of the Water Quality Act of 1987 requires the Department of Environmental Quality to develop an annual plan that identifies the intended use of its revolving loan funds for construction of publicly owned wastewater treatment facilities and other clean water projects, including the development of a project priority list. The intended use plan for FY 2009 and FY 2009 draft list of targeted loan recipients are open to public comment. The public comment and review period will end at the conclusion of the meeting.

Contact Information: Walter Gills, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4133, FAX (804)698-4032

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

VIRGINIA WORKERS' COMPENSATION COMMISSION

Title of Regulation: **16VAC30-91. Claims Reporting.**

Publication: 25:1 VA.R. 49-55 September 15, 2008.

Correction to Proposed Regulation:

Page 49, Title of Regulation, 16VAC30-91, Claims Reporting, delete ", 16VAC30-91-30"