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Virginia Register of Regulations

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

THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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).

December 2008 through October 2009

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
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INDEX 2 Volume 25		**April 2009**
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FINAL INDEX Volume 25		**October 2009**
26:1	August 26, 2009	September 14, 2009
26:2	September 9, 2009	September 28, 2009
26:3	September 23, 2009	October 12, 2009
26:4	October 7, 2009	October 26, 2009

*Filing deadlines are Wednesdays unless otherwise specified.

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

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 1. Administration			
1 VAC 30-10-10 through 1 VAC 30-10-70	Repealed	25:6 VA.R. 1170	1/1/09
1 VAC 30-11-10 through 1 VAC 30-11-110	Added	25:6 VA.R. 1170-1173	1/1/09
1 VAC 30-45-10 through 1 VAC 30-45-860	Added	25:7 VA.R. 1409-1413	1/1/09
1 VAC 30-46-10 through 1 VAC 30-46-210	Added	25:7 VA.R. 1413-1417	1/1/09
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 5-150-10	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
2 VAC 5-501-100	Amended	24:17 VA.R. 2336	6/12/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
2 VAC 5-510-410	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-420	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-500	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-510	Amended	24:17 VA.R. 2353	6/12/08
2 VAC 5-531-50	Amended	24:16 VA.R. 2235	5/29/08
2 VAC 5-531-140	Amended	24:16 VA.R. 2241	5/29/08
2 VAC 15-11-10 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 20-10-10 through 2 VAC 20-10-120	Repealed	25:5 VA.R. 792	12/10/08
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 20-11-10 through 2 VAC 20-11-110	Added	25:5 VA.R. 792-795	12/10/08
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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 20-40-50	Amended	24:17 VA.R. 2357	6/12/08
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 5-10-480	Repealed	25:6 VA.R. 1173	12/24/08
3 VAC 5-11-10 through 3 VAC 5-11-110	Added	25:6 VA.R. 1175-1178	12/24/08
3 VAC 5-50-140 emer	Amended	24:11 VA.R. 1344	1/9/08-1/8/09
3 VAC 5-50-145 emer	Added	24:11 VA.R. 1345	1/9/08-1/8/09
3 VAC 5-70-220	Amended	24:14 VA.R. 1891	5/1/08
3 VAC 5-70-225 emer	Added	24:10 VA.R. 1257	1/2/08-1/1/09
Title 4. Conservation and Natural Resources			
4 VAC 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 5-36-50	Amended	25:6 VA.R. 1178	1/1/09
4 VAC 5-36-60	Amended	25:6 VA.R. 1183	1/1/09
4 VAC 5-36-70	Amended	25:6 VA.R. 1184	1/1/09
4 VAC 5-36-90	Amended	25:6 VA.R. 1185	1/1/09
4 VAC 5-36-100	Amended	25:6 VA.R. 1187	1/1/09
4 VAC 5-36-110	Amended	25:6 VA.R. 1191	1/1/09
4 VAC 5-36-115	Added	25:6 VA.R. 1192	1/1/09
4 VAC 5-36-120	Amended	25:6 VA.R. 1192	1/1/09
4 VAC 5-36-140	Amended	25:6 VA.R. 1193	1/1/09
4 VAC 5-36-150	Amended	25:6 VA.R. 1195	1/1/09
4 VAC 5-36-180	Amended	25:6 VA.R. 1198	1/1/09
4 VAC 5-36-200	Amended	25:6 VA.R. 1199	1/1/09
4 VAC 5-36-210	Amended	25:6 VA.R. 1204	1/1/09
4 VAC 5-50-10 through 4 VAC 5-50-170	Repealed	24:17 VA.R. 2357	5/28/08
4 VAC 10-10-10 through 4 VAC 10-10-30	Repealed	25:6 VA.R. 1208	12/24/08
4 VAC 10-11-10 through 4 VAC 10-11-110	Added	25:6 VA.R. 1209-1212	12/24/08
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-40-220	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-20	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-25	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-71	Amended	24:24 VA.R. 3332	7/8/08
4 VAC 15-50-81	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-91	Amended	24:23 VA.R. 3110	7/1/08
4 VAC 15-70-50	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-70-70	Added	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-22	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-70	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-80	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-80	Amended	24:24 VA.R. 3332	7/8/08
4 VAC 15-90-90	Amended	24:23 VA.R. 3113	7/1/08
4 VAC 15-90-91	Amended	24:23 VA.R. 3114	7/1/08
4 VAC 15-110-10	Amended	24:23 VA.R. 3117	7/1/08
4 VAC 15-110-75	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-11	Added	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-20	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-31	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-40	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-50	Amended	24:23 VA.R. 3119	7/1/08
4 VAC 15-240-51	Added	24:23 VA.R. 3119	7/1/08
4 VAC 15-260-140	Amended	24:24 VA.R. 3333	7/8/08
4 VAC 15-270-50	Repealed	24:24 VA.R. 3334	7/8/08
4 VAC 15-320-25	Amended	24:10 VA.R. 1265	1/1/08
4 VAC 15-330-30	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-100	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-120	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-160	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-171	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-330-200	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-10	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-30	Amended	24:10 VA.R. 1274	1/1/08
4 VAC 15-350-20	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-30	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-60	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-70	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-360-10	Amended	24:10 VA.R. 1276	1/1/08
4 VAC 15-410-10 through 4 VAC 15-410-160	Added	24:23 VA.R. 3119-3125	7/1/08
4 VAC 20-20-50	Amended	25:6 VA.R. 1212	11/1/08
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 20-252-90	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-252-100	Amended	25:6 VA.R. 1213	11/1/08

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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 20-260-35	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-260-40 emer	Amended	25:3 VA.R. 353	10/1/08-10/31/08
4 VAC 20-260-40	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-270-10 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-10	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-270-30	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-40	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-50	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-270-55	Amended	24:15 VA.R. 2023	3/1/08
4 VAC 20-270-55	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-56	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-58	Added	24:19 VA.R. 2751	4/30/08
4 VAC 20-320-50	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-450-30	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-530-20	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-530-31	Amended	24:13 VA.R. 1735	2/5/08
4 VAC 20-530-32	Repealed	24:12 VA.R. 1457	2/1/08
4 VAC 20-610-20	Amended	24:8 VA.R. 959	12/1/07
4 VAC 20-610-25	Added	24:8 VA.R. 959	12/1/07
4 VAC 20-610-30	Amended	24:8 VA.R. 960	12/1/07
4 VAC 20-610-30	Amended	24:15 VA.R. 2024	3/1/08
4 VAC 20-610-50	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-610-60	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-620-20	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

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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
4 VAC 20-751-20	Amended	25:6 VA.R. 1214	10/29/08
4 VAC 20-752-20	Amended	24:19 VA.R. 2754	4/30/08
4 VAC 20-752-30	Amended	24:16 VA.R. 2246	4/1/08
4 VAC 20-752-30	Amended	24:19 VA.R. 2755	4/30/08
4 VAC 20-880-10 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-10	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-880-20 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-20	Amended	24:19 VA.R. 2756	4/30/08
4 VAC 20-880-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-880-30	Amended	24:19 VA.R. 2757	4/30/08
4 VAC 20-880-30	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-910-45	Amended	24:25 VA.R. 3537	8/1/08
4 VAC 20-910-45	Amended	25:6 VA.R. 1214	11/1/08
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

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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 20-1170-10	Added	25:6 VA.R. 1215	12/1/08
4 VAC 20-1170-20	Added	25:6 VA.R. 1215	12/1/08
4 VAC 25-10-10 through 4 VAC 25-10-90	Repealed	25:5 VA.R. 795	12/25/08
4 VAC 25-11-10 through 4 VAC 25-11-120	Added	25:5 VA.R. 797-800	12/25/08
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
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

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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
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 35-60-20	Amended	25:5 VA.R. 800	11/10/08
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 5-5-10 through 9 VAC 5-5-110	Added	25:5 VA.R. 801-804	1/1/09
9 VAC 5-80-5	Added	25:6 VA.R. 1231	12/31/08
9 VAC 5-80-15	Added	25:6 VA.R. 1234	12/31/08
9 VAC 5-80-25	Added	25:6 VA.R. 1234	12/31/08
9 VAC 5-80-35	Added	25:6 VA.R. 1235	12/31/08
9 VAC 5-80-150	Amended	25:6 VA.R. 1237	12/31/08
9 VAC 5-80-230	Amended	25:6 VA.R. 1237	12/31/08

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9 VAC 5-80-270	Amended	25:6 VA.R. 1238	12/31/08
9 VAC 5-80-510	Amended	25:6 VA.R. 1239	12/31/08
9 VAC 5-80-590	Amended	25:6 VA.R. 1241	12/31/08
9 VAC 5-80-670	Amended	25:6 VA.R. 1241	12/31/08
9 VAC 5-80-860	Amended	25:6 VA.R. 1243	12/31/08
9 VAC 5-80-990	Amended	25:6 VA.R. 1243	12/31/08
9 VAC 5-80-1020	Amended	25:6 VA.R. 1244	12/31/08
9 VAC 5-80-1100	Amended	25:6 VA.R. 1258	12/31/08
9 VAC 5-80-1110	Amended	25:6 VA.R. 1259	12/31/08
9 VAC 5-80-1160	Amended	25:6 VA.R. 1244	12/31/08
9 VAC 5-80-1170	Amended	25:6 VA.R. 1245	12/31/08
9 VAC 5-80-1290	Amended	25:6 VA.R. 1246	12/31/08
9 VAC 5-80-1320	Amended	25:6 VA.R. 1264	12/31/08
9 VAC 5-80-1450	Amended	25:6 VA.R. 1247	12/31/08
9 VAC 5-80-1460	Amended	25:6 VA.R. 1248	12/31/08
9 VAC 5-80-1615	Amended	25:6 VA.R. 1218	12/31/08
9 VAC 5-80-1695	Amended	25:6 VA.R. 1229	12/31/08
9 VAC 5-80-1765	Amended	25:6 VA.R. 1249	12/31/08
9 VAC 5-80-1773	Added	25:6 VA.R. 1251	12/31/08
9 VAC 5-80-1775	Amended	25:6 VA.R. 1251	12/31/08
9 VAC 5-80-1955	Amended	25:6 VA.R. 1253	12/31/08
9 VAC 5-80-2060	Amended	25:6 VA.R. 1254	12/31/08
9 VAC 5-80-2070	Amended	25:6 VA.R. 1255	12/31/08
9 VAC 5-80-2230	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-91-20	Amended	25:6 VA.R. 1268	12/31/08
9 VAC 5-140-900	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-140-920	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-140-930	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-151-10	Amended	25:6 VA.R. 1276	12/31/08
9 VAC 5-151-20	Amended	25:6 VA.R. 1278	12/31/08
9 VAC 5-151-40	Amended	25:6 VA.R. 1279	12/31/08
9 VAC 5-151-61	Repealed	25:6 VA.R. 1279	12/31/08
9 VAC 5-151-70	Amended	25:6 VA.R. 1280	12/31/08
9 VAC 5-170-20	Amended	25:5 VA.R. 804	1/1/09
9 VAC 5-170-30	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-170-40	Amended	25:5 VA.R. 806	1/1/09
9 VAC 5-170-80	Amended	25:5 VA.R. 807	1/1/09
9 VAC 5-170-90	Repealed	25:5 VA.R. 807	1/1/09
9 VAC 5-170-100	Repealed	25:5 VA.R. 807	1/1/09
9 VAC 5-170-110	Repealed	25:5 VA.R. 809	1/1/09
9 VAC 5-170-180	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-170-190	Amended	25:6 VA.R. 1257	12/31/08
9 VAC 5-170-200	Amended	25:6 VA.R. 1257	12/31/08
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 15-10-10 through 9 VAC 15-10-40	Repealed	25:5 VA.R. 809	1/1/09
9 VAC 15-11-10 through 9 VAC 15-11-110	Added	25:5 VA.R. 810-813	1/1/09
9 VAC 20-60-18	Amended	24:9 VA.R. 1106	2/6/08

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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 25-10-10 through 9 VAC 25-10-40	Repealed	25:5 VA.R. 813	1/1/09
9 VAC 25-11-10 through 9 VAC 25-11-110	Added	25:5 VA.R. 813-816	1/1/09
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 25-210-10	Amended	25:5 VA.R. 894	12/10/08
9 VAC 25-210-50	Amended	25:5 VA.R. 898	12/10/08
9 VAC 25-210-60	Amended	24:9 VA.R. 1136	2/6/08
9 VAC 25-210-60	Amended	25:5 VA.R. 898	12/10/08
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 25-210-130	Amended	25:5 VA.R. 902	12/10/08
9 VAC 25-210-220	Amended	25:5 VA.R. 903	12/10/08
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 25-260-30	Amended	25:5 VA.R. 904	10/22/08
9 VAC 25-640 Appendices I through IX	Amended	25:2 VA.R. 217-231	11/1/08
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

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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 25-790 (Forms)	Added	25:6 VA.R. 1285	--
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
9 VAC 25-860-10 through 9 VAC 25-860-70	Added	25:6 VA.R. 1285-1295	12/24/08
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
Title 11. Gaming			
11 VAC 10-10-10 through 11 VAC 10-10-70	Repealed	25:5 VA.R. 904	12/10/08
11 VAC 10-11-10 through 11 VAC 10-11-110	Added	25:5 VA.R. 905-907	12/10/08
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

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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
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

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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
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

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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
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

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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 5-590-10	Amended	25:5 VA.R. 908	12/10/08
12 VAC 5-590-370	Amended	25:5 VA.R. 916	12/10/08
12 VAC 5-590-410	Amended	25:5 VA.R. 955	12/10/08
12 VAC 5-590-420	Amended	25:5 VA.R. 959	12/10/08
12 VAC 5-590-440	Amended	25:5 VA.R. 994	12/10/08
12 VAC 5-590-500	Amended	25:5 VA.R. 998	12/10/08
12 VAC 5-590-530	Amended	25:5 VA.R. 999	12/10/08
12 VAC 5-590-540	Amended	25:5 VA.R. 1011	12/10/08
12 VAC 5-590-545	Amended	25:5 VA.R. 1016	12/10/08
12 VAC 5-590-550	Amended	25:5 VA.R. 1021	12/10/08
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 30-50-130	Amended	25:5 VA.R. 1041	12/10/08
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 30-50-229.1	Repealed	25:5 VA.R. 1045	12/10/08
12 VAC 30-50-491 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-530	Amended	25:5 VA.R. 1049	12/10/08
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

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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
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

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13 VAC 5-51-130 through 13 VAC 5-51-135	Amended	24:14 VA.R. 1925-1928	5/1/08
13 VAC 5-51-143	Added	24:14 VA.R. 1928	5/1/08
13 VAC 5-51-145	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-150	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-152	Repealed	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-154	Amended	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-155	Amended	24:14 VA.R. 1939	5/1/08
13 VAC 5-63-10 through 13 VAC 5-63-50	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-70	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-80	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-100 through 13 VAC 5-63-130	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-150	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-160	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-190 through 13 VAC 5-63-260	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-225	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-265	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-267	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-270	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-280	Amended	24:14 VA.R. 1941	5/1/08
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 10-180-40	Amended	25:7 VA.R. 1418	1/1/09
13 VAC 10-180-50	Amended	24:11 VA.R. 1374	2/4/08
13 VAC 10-180-50	Amended	25:7 VA.R. 1419	1/1/09
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 10-180-60	Amended	25:7 VA.R. 1421	1/1/09

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13 VAC 10-180-100	Amended	24:11 VA.R. 1397	2/4/08
Title 14. Insurance			
14 VAC 5-30-30	Amended	24:15 VA.R. 2153	4/1/08
14 VAC 5-200-185	Amended	24:15 VA.R. 2155	4/1/08
14 VAC 5-211-50	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-90	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-100	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-215 (Forms)	Amended	24:17 VA.R. 2452	--
14 VAC 5-270-10 through 14 VAC 5-270-150	Amended	24:12 VA.R. 1460-1470	1/1/10
14 VAC 5-270-144	Added	24:12 VA.R. 1467	1/1/10
14 VAC 5-270-146	Added	24:12 VA.R. 1468	1/1/10
14 VAC 5-270-148	Added	24:12 VA.R. 1469	1/1/10
14 VAC 5-270-170	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-174	Added	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-180	Amended	24:12 VA.R. 1470	1/1/10
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

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16 VAC 30-11-10 through 16 VAC 30-11-30	Repealed	25:6 VA.R. 1307	12/24/08
16 VAC 30-12-10 through 16 VAC 30-12-110	Added	25:6 VA.R. 1307-1310	12/24/08
Title 17. Libraries and Cultural Resources			
17 VAC 5-10-10 through 17 VAC 5-10-40	Repealed	25:6 VA.R. 1310	12/24/08
17 VAC 5-11-10 through 17 VAC 5-11-110	Added	25:6 VA.R. 1311-1313	12/24/08
17 VAC 10-10-10 through 17 VAC 10-10-40	Repealed	25:6 VA.R. 1313	12/24/08
17 VAC 10-11-10 through 17 VAC 10-11-110	Added	25:6 VA.R. 1314-1316	12/24/08
17 VAC 15-10-10	Repealed	25:5 VA.R. 1064	12/10/08
17 VAC 15-11-10 through 17 VAC 15-11-110	Added	25:5 VA.R. 1065-1067	12/10/08
17 VAC 15-120-10	Added	25:6 VA.R. 1317	12/24/08
17 VAC 15-120-20	Added	25:6 VA.R. 1317	12/24/08
17 VAC 15-120-30	Added	25:6 VA.R. 1317	12/24/08
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 10-20-120	Amended	25:5 VA.R. 1068	1/1/09
18 VAC 10-20-140	Amended	25:5 VA.R. 1068	1/1/09
18 VAC 10-20-280	Amended	25:3 VA.R. 399	12/1/08
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 10-20-310	Erratum	25:7 VA.R. 1451	--
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 25-10-10 through 18 VAC 25-10-90	Repealed	25:6 VA.R. 1318	12/24/08
18 VAC 25-11-10 through 18 VAC 25-11-110	Added	25:6 VA.R. 1319-1321	12/24/08
18 VAC 25-21-20	Amended	25:7 VA.R. 1431	2/1/09
18 VAC 25-21-40	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-50	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-60	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-110	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-120	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-150	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-170	Amended	25:7 VA.R. 1434	2/1/09
18 VAC 25-21-180	Amended	25:7 VA.R. 1434	2/1/09
18 VAC 25-21-185	Added	25:7 VA.R. 1435	2/1/09
18 VAC 30-10-10 through 18 VAC 30-10-120	Repealed	25:5 VA.R. 1070	12/10/08
18 VAC 30-11-10 through 18 VAC 30-11-110	Added	25:5 VA.R. 1070-1073	12/10/08
18 VAC 30-20 (Forms)	Amended	24:26 VA.R. 3814	--

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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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 41-10-10 through 18 VAC 41-10-90	Repealed	25:6 VA.R. 1321	12/24/08
18 VAC 41-11-10 through 18 VAC 41-11-110	Added	25:6 VA.R. 1322-1325	12/24/08
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 47-10-10 through 18 VAC 47-10-90	Repealed	25:6 VA.R. 1325	12/24/08
18 VAC 47-11-10 through 18 VAC 47-11-110	Added	25:6 VA.R. 1325-1328	12/24/08
18 VAC 48-10-10 through 18 VAC 48-10-110	Added	25:3 VA.R. 411-414	11/13/08
18 VAC 48-20-10 through 18 VAC 48-20-730 emer	Added	25:5 VA.R. 1074-1093	11/13/08-11/12/09
18 VAC 48-40-10 through 18 VAC 48-40-110	Added	25:4 VA.R. 685-688	11/27/08
18 VAC 48-50-10 through 18 VAC 48-50-200 emer	Added	25:5 VA.R. 1095-1100	11/13/08-11/12/09
18 VAC 48-60-10 through 18 VAC 48-60-60	Added	25:4 VA.R. 688-689	11/27/08
18 VAC 50-10-10 through 18 VAC 50-10-90	Repealed	25:6 VA.R. 1328	12/24/08
18 VAC 50-11-10 through 18 VAC 50-11-110	Added	25:6 VA.R. 1328-1331	12/24/08
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 62-10-10 through 18 VAC 62-10-110	Added	25:6 VA.R. 1332-1334	12/24/08
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
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	--

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18 VAC 70-10-10 through 18 VAC 70-10-90	Repealed	25:5 VA.R. 1100	12/10/08
18 VAC 70-11-10 through 18 VAC 70-11-110	Added	25:5 VA.R. 1100-1103	12/10/08
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 80-10-10 through 18 VAC 80-10-90	Repealed	25:6 VA.R. 1334	12/24/08
18 VAC 80-11-10 through 18 VAC 80-11-110	Added	25:6 VA.R. 1335-1338	12/24/08
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 85-80-10 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-26	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-80-26 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-40 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-45 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-50 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-61 emer	Repealed	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-65	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-80-65 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-70 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-72 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-73	Added	24:11 VA.R. 1406	3/5/08
18 VAC 85-80-73 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-80 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-90 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-100 emer	Amended	25:5 VA.R. 1107	11/1/08-10/31/09
18 VAC 85-80-110 emer	Amended	25:5 VA.R. 1107	11/1/08-10/31/09
18 VAC 85-80-111 emer	Added	25:5 VA.R. 1108	11/1/08-10/31/09
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
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 90-30-10	Amended	25:5 VA.R. 1111	12/25/08
18 VAC 90-30-20	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-30	Amended	25:5 VA.R. 1112	12/25/08

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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 90-30-80	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-85	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-100	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-105	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-110	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-120	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-120	Amended	25:5 VA.R. 1114	12/25/08
18 VAC 90-30-121	Added	24:10 VA.R. 1289	2/20/08
18 VAC 90-30-121	Amended	25:5 VA.R. 1114	12/25/08
18 VAC 90-30-160	Amended	24:24 VA.R. 3370	9/3/08
18 VAC 90-30-220	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-30-230	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-40 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-40-10	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-40-20	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-40	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-50	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-55	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-60	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-90	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-100	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-121	Added	25:5 VA.R. 1118	12/25/08
18 VAC 90-40-130	Amended	25:5 VA.R. 1118	12/25/08
18 VAC 90-40-140	Amended	25:5 VA.R. 1118	12/25/08
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 95-10-10 through 18 VAC 95-10-120	Repealed	25:6 VA.R. 1338	12/24/08
18 VAC 95-11-10 through 18 VAC 95-11-110	Added	25:6 VA.R. 1338-1341	12/24/08
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
18 VAC 95-20-220	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-20-225	Amended	25:6 VA.R. 1341	12/24/08
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 100-10-10 through 18 VAC 100-10-90	Repealed	25:6 VA.R. 1342	12/24/08
18 VAC 100-11-10 through 18 VAC 100-11-110	Added	25:6 VA.R. 1342-1345	12/24/08
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

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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
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

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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 130-10-10 through 18 VAC 130-10-90	Repealed	25:6 VA.R. 1345	12/24/08
18 VAC 130-11-10 through 18 VAC 130-11-110	Added	25:6 VA.R. 1345-1348	12/24/08
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 135-10-10 through 18 VAC 135-10-90	Repealed	25:6 VA.R. 1348	12/24/08
18 VAC 135-11-10 through 18 VAC 135-11-110	Added	25:6 VA.R. 1348-1351	12/24/08
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
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

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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 145-10-10 through 18 VAC 145-10-90	Repealed	25:6 VA.R. 1351	12/24/08
18 VAC 145-11-10 through 18 VAC 145-11-110	Added	25:6 VA.R. 1352-1355	12/24/08
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 155-10-5 through 18 VAC 155-10-80	Repealed	25:6 VA.R. 1355	12/24/08
18 VAC 155-11-10 through 18 VAC 155-11-110	Added	25:6 VA.R. 1355-1358	12/24/08
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 15-10-10 through 19 VAC 15-10-50	Repealed	25:5 VA.R. 1118	12/10/08
19 VAC 15-11-10 through 19 VAC 15-11-110	Added	25:5 VA.R. 1119-1121	12/10/08
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
20 VAC 5-414-10 through 20 VAC 5-414-70	Added	25:7 VA.R. 1437-1438	12/1/08
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

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21 VAC 5-110-95	Added	24:21 VA.R. 2992	7/1/08
Title 22. Social Services			
22 VAC 5-10-10 through 22 VAC 5-10-110	Repealed	25:5 VA.R. 1122	1/1/09
22 VAC 5-11-10 through 22 VAC 5-11-110	Added	25:5 VA.R. 1122-1125	1/1/09
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 20-10-10 through 22 VAC 20-10-100	Repealed	25:7 VA.R. 1438	1/7/09
22 VAC 20-11-10 through 22 VAC 20-11-110	Added	25:7 VA.R. 1439-1441	1/7/09
22 VAC 27-10-10 through 22 VAC 27-10-110	Added	25:7 VA.R. 1442-1445	1/7/09
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
22 VAC 45-11-10 through 22 VAC 45-11-90	Repealed	25:5 VA.R. 1125	12/1/08
22 VAC 45-12-10 through 22 VAC 45-12-110	Added	25:5 VA.R. 1125-1128	12/1/08
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	1/10/09***
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	1/10/09***
23 VAC 10-20-155	Added	24:26 VA.R. 3848	10/1/08
23 VAC 10-20 (Forms)	Amended	25:5 VA.R. 1128	--
23 VAC 10-55 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-60 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-65 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-75 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-210 (Forms)	Amended	25:6 VA.R. 1358	--
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

*** See erratum (25:6 VA.R. 1375) for effective date

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 10-220 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-230 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-240 (Forms)	Amended	25:6 VA.R. 1359	--
23 VAC 10-300 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-310 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-330 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-350 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-370 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-390 (Forms)	Amended	25:5 VA.R. 1130	--
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 20-10-10 through 24 VAC 20-10-140	Repealed	25:6 VA.R. 1360	12/24/08
24 VAC 20-11-10 through 24 VAC 20-11-110	Added	25:6 VA.R. 1361-1364	12/24/08
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 25-5-10 through 24 VAC 25-5-110	Added	25:7 VA.R. 1445-1448	1/7/09
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 27-10-10 through 24 VAC 27-10-120	Repealed	25:6 VA.R. 1364	12/24/08
24 VAC 27-11-10 through 24 VAC 27-11-110	Added	25:6 VA.R. 1364-1367	12/24/08
24 VAC 27-30-10 through 24 VAC 27-30-190	Added	25:1 VA.R. 78-89	10/15/08
24 VAC 30-10-10 through 24 VAC 30-10-70	Repealed	25:6 VA.R. 1367	12/24/08
24 VAC 30-11-10 through 24 VAC 30-11-110	Added	25:6 VA.R. 1367-1370	12/24/08
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
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
24 VAC 30-380-10	Amended	25:5 VA.R. 1130	10/22/08
24 VAC 35-10-10 through 24 VAC 35-10-70	Repealed	25:5 VA.R. 1131	12/10/08
24 VAC 35-11-10 through 24 VAC 35-11-110	Added	25:5 VA.R. 1132-1134	12/10/08

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending the following regulations: **9VAC25-720, Water Quality Management Planning Regulation.** The purpose of the proposed action is to apply an appropriate, scientifically based total nitrogen (TN) concentration value to calculate the TN waste load allocation for the Fauquier County Water and Sewer Authority (FCW&SA)-Vint Hill wastewater treatment facility.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1313(e) of the Clean Water Act.

Public Comments: Public comments may be submitted until 5 p.m. on January 23, 2009.

Agency Contact: John M. Kennedy, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, FAX (804) 698-4116, TTY (804) 698-4021, or email jmkennedy@deq.virginia.gov.

VA.R. Doc. No. R09-1527; Filed December 3, 2008, 11:10 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Commission on the Virginia Alcohol Safety Action Program intends to consider promulgating the following regulations: **24VAC35-60, Ignition Interlock Regulations.** The purpose of the proposed action is to promulgate a new regulation covering the process for certifying ignition interlock as required by § 18.2-270.2 of the Code of Virginia.

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

Statutory Authority: § 18.2 -270.2 of the Code of Virginia.

Public Comments: Public comments may be submitted until January 21, 2009.

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.

VA.R. Doc. No. R09-1589; Filed December 3, 2008, 3:21 p.m.

TITLE 1. ADMINISTRATION

DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW 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: **1VAC17-10. Public Participation Guidelines (repealing 1VAC17-10-10 through 1VAC17-10-90).**

1VAC17-11. Public Participation Guidelines (adding 1VAC17-11-10 through 1VAC17-11-110).

Statutory Authority: §§ 2.2-2405 and 2.2-4007.02 of the Code of Virginia.

Effective Date: January 21, 2009.

Agency Contact: Rhonda Bishton, Regulatory Coordinator, Department of General Services, Ninth St. Office Bldg., 202 North 9th Street, Suite 209, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.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

1VAC17-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Design-Build/Construction Management Review 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).

1VAC17-11-20. 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 Design-Build/Construction Management Review 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

1VAC17-11-30. 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.

1VAC17-11-40. 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 1VAC17-11-30, 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

1VAC17-11-50. 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.

1VAC17-11-60. 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.

1VAC17-11-70. 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.

1VAC17-11-80. 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.

1VAC17-11-90. 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.

1VAC17-11-100. 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.

1VAC17-11-110. 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. R09-1416; Filed December 1, 2008, 1:12 p.m.

DEPARTMENT OF GENERAL SERVICES

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: **1VAC30-10. Public Participation Guidelines (repealing 1VAC30-10-10 through 1VAC30-10-70).**

1VAC30-11. Public Participation Guidelines (adding 1VAC30-11-10 through 1VAC30-11-110).

Statutory Authority: §§ 2.2-1102 and 2.2-4007.02 of the Code of Virginia.

Effective Date: January 21, 2009.

Agency Contact: Rhonda Bishton, Regulatory Coordinator, Department of General Services, 202 North Ninth Street, Room 209, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.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

1VAC30-11-10. Purpose.

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

1VAC30-11-20. 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 General Services, 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

1VAC30-11-30. 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.

1VAC30-11-40. 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 1VAC30-11-30, 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

1VAC30-11-50. 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.

1VAC30-11-60. 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.

1VAC30-11-70. 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.

1VAC30-11-80. 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.

1VAC30-11-90. 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.

1VAC30-11-100. 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.

1VAC30-11-110. 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. R09-1417; Filed November 24, 2008, 10:43 a.m.

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TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

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

Final Regulation

Title of Regulation: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-47, 4VAC20-950-48).**

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

Effective Date: January 1, 2009.

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

Summary:

The amendments establish that (i) the 2009 commercial black sea bass directed fishery quota shall be 168,638 pounds and the bycatch fishery quota shall be 40,000 pounds from January 1 through April 30, and from May 1 through December 31, 2009, the black sea bass bycatch fishery quota is the lesser of 10,000 pounds or the remaining amount of black sea bass bycatch fishery quota as of May 1, 2009; (ii) when 75% of the bycatch fishery quota has been taken, it shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel or to land in Virginia more than 100 pounds of black sea bass; and (iii) as of May 1, 2009, should the remaining amount of black sea bass bycatch fishery quota exceed 10,000 pounds, that excess quota shall be allocated to commercial black sea bass directed fishery permit holders who have landed at least 500 pounds of black sea bass in at least two of three years starting in 2005 and ending in 2007. The basis for that allocation shall be the same as used to determine an individual directed fishery quota as described in 4VAC20-950-46.

4VAC20-950-47. Commercial harvest quotas.

A. The ~~2008~~ 2009 commercial black sea bass directed fishery quota is ~~355,152~~ 168,638 pounds. When it has been announced that the directed fishery quota has been projected as reached and the directed fishery has been closed, it shall be unlawful for any directed commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass.

B. The ~~2008~~ 2009 commercial black sea bass bycatch fishery quota is 40,000 pounds from January 1 through April 30. From May 1 through December 31, 2009, the commercial black sea bass bycatch fishery quota is the lesser of 10,000 pounds or the remaining amount of black sea bass bycatch fishery quota as of May 1, 2009. When it has been announced that the bycatch fishery quota has been projected as reached and the bycatch fishery has been closed, it shall be unlawful for any bycatch commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass. In the event the bycatch fishery quota is exceeded, the amount the quota overage shall be deducted from the following year's bycatch fishing quota.

4VAC20-950-48. Individual fishery quotas; bycatch limit; at sea harvesters; exceptions.

A. Each person possessing a directed fishery permit shall be assigned an individual fishery quota, in pounds, for each calendar year. Except as provided in subsection F of this section, a person's individual fishery quota shall be equal to that person's percentage of the total landings of black sea bass in Virginia from July 1, 1997, through December 31, 2001, multiplied by the directed commercial fishery black sea bass quota for the calendar year. Any directed fishery permittee shall be limited to landings in the amount of his individual fishery quota, in pounds, in any calendar year and it shall be unlawful for any permittee to exceed his individual fishery quota. In addition to the penalties prescribed by law, any overages of an individual's fishery quota shall be deducted from that permittee's individual fishery quota for the following year.

B. In the determination of a person's percentage of total landings, the commission shall use the greater amount of landings from either the National Marine Fisheries Service Dealer Weigh-out Reports or National Marine Fisheries Service Vessel Trip Reports that have been reported and filed as of November 26, 2002. If a person's percentage of the total landings of black sea bass is determined by using the Vessel Trip Reports as the greater amount, then the person shall provide documentation to the Marine Resources Commission to verify the Vessel Trip Reports as accurate. This documentation may include dealer receipts of sales or other pertinent documentation, and such documentation shall be submitted to the commission by December 1, 2004. In the event the commission is not able to verify the full amount of the person's Vessel Trip Reports for the qualifying period, the commission shall use the greater amount of landings, from either the Dealer Weigh-Out Reports or the verified portion of the Vessel Trip Reports to establish that person's share of the quota.

C. It shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel, or to land in Virginia, in any one day, more than 200 pounds of black sea bass, except that any person permitted in the bycatch fishery may possess aboard a vessel, or land in Virginia, more than 200 pounds of black sea bass, in any one day, provided the total weight of black sea bass on board the vessel does not exceed 10%, by weight, of the total weight of summer flounder, scup, Loligo squid and Atlantic mackerel on board the vessel. When it is projected and announced that ~~85%~~ 75% of the bycatch fishery quota has been be taken, it shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel, or to land in Virginia, more than ~~200~~ 100 pounds of black sea bass~~, except that any person permitted in the bycatch fishery may possess aboard a vessel, or land in Virginia, more than 200 pounds of black sea bass, in any one day, but not more than 1,000 pounds, provided the total weight of black sea bass aboard the vessel does not exceed 10%, by weight, of the total weight of summer flounder, scup, Loligo squid and Atlantic mackerel on board the vessel~~.

D. It shall be unlawful for any person to transfer black sea bass from one vessel to another while at sea.

E. The commission sets aside 10,000 pounds of the annual commercial fishery black sea bass quota for distribution to all qualified applicants granted an exception by the commission from the requirements of 4VAC20-950-46 B based upon

medical conditions, or other hardship, which limited the applicant's ability to fish for black sea bass during the qualifying period. In granting an exception, the commission will give preference to those applicants who can demonstrate the greater levels of participation in the black sea bass fishery during and after the qualifying period or document an apprenticeship or helper status in the black sea bass fishery. Any applicant who is granted an exception by the commission shall receive a portion of the 10,000 pounds; however, no portion shall exceed the lowest individual fishery quota, in pounds, at the beginning of the season. There shall be no transfer of quota received by applicants to the exception process for a period of five years after receipt of that quota. Any portion of the 10,000 pounds not allotted by the commission to the qualified applicants as of November 1 shall be added to the annual bycatch quota described in 4VAC20-950-47 B.

F. An individual fishery quota, as described in subsection A of this section, shall be equal to an individual's current percentage share of the directed fishery quota, as described in 4VAC20-950-47 A. As of May 1, 2009, should the remaining amount of black sea bass bycatch fishery quota exceed 10,000 pounds, that excess quota shall be allocated to commercial black sea bass directed fishery permit holders who have landed at least 500 pounds of black sea bass in at least two of three years, starting in 2005 and ending in 2007. The basis for that allocation shall be the same as used to determine an individual directed fishery quota as described in subsection A of this section.

VA.R. Doc. No. R09-1725; Filed December 1, 2008, 10:18 a.m.

Final Regulation

Title of Regulation: **4VAC20-1040. Pertaining to Crabbing Licenses (amending 4VAC20-1040-20; adding 4VAC20-1040-25).**

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

Effective Date: November 30, 2008.

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

Summary:

The amendments (i) establish license ineligibility conditions for the lawful crabbing seasons of 2008 through 2010 for crab pots and peeler pots; (ii) establish that for the lawful crabbing seasons of 2009 and all subsequent seasons, those registered commercial fisherman who were eligible from 2004 through 2008 for any crab pot or peeler pot licenses, but reported no harvest from 2004 through 2007, shall be placed on a waiting list and shall be ineligible to purchase a crab pot or peeler pot license, except as described in 4VAC20-1040-20 B; (iii) establish that those crab pot or peeler pot fishermen who reported harvest prior to the control date of December 17, 2007, from the crab dredge fishery for both the 2005/2006 and 2006/2007 seasons, shall remain eligible to purchase their crab pot or peeler pot license for the lawful crabbing seasons of 2009 and 2010, and establish that those crab pot or peeler pot fishermen who do not meet the condition shall remain on the waiting list until such time that results from the Chesapeake Bay Winter Dredge Survey indicate that an abundance of 200 million age 1+ blue crabs (2.4 inches and greater, carapace width) has been attained in three consecutive seasonal (December/March) surveys; and (iv) establish that any registered commercial fisherman may appeal the status of his license ineligibility to the commission provided documentation of a health condition that prevented the harvest of any crabs during the 2004 through 2007 lawful crabbing seasons, active military service that prevented the harvest of any crabs during the 2004 through 2007 lawful crabbing seasons, or a substantial error in his Mandatory Harvest Reporting records.

4VAC20-1040-20. License sales moratorium and license ineligibility conditions.

A. For the lawful crabbing seasons of 2008 through 2010, commercial licenses for crab pot, peeler pot, crab scrape, crab trap, ordinary trot line, patent trot line, and dip net shall be sold only to those registered commercial fishermen who have been determined by the commission to be eligible to purchase any of these licenses in 2007, except as described in subsection B of this section. ~~Any person receiving a crab license by lawful transfer in 2008 through 2010 also establishes his eligibility to purchase that specific license through 2010; however, any person either failing to register as a commercial fisherman in any year or lawfully transferring his crab license to another person shall forfeit his eligibility to purchase that specific crab license through 2010.~~

B. For the lawful crabbing seasons of 2009 and all subsequent seasons, those registered commercial fishermen who were eligible from 2004 through 2008 for any crab pot or peeler pot licenses, but reported no harvest from 2004 through 2007, shall be placed on a waiting list and shall be ineligible to purchase a crab pot or peeler pot license, except as described in subdivisions 1 and 2 of this subsection.

1. Those crab pot or peeler pot fishermen, described in this subsection, who reported harvest prior to the control date of December 17, 2007, from the crab dredge fishery for both the 2005/06 and 2006/07 seasons shall remain eligible to purchase their crab pot or peeler pot license for the lawful crabbing seasons of 2009 and 2010.

2. Those crab pot or peeler pot fishermen, described in this subsection, who do not meet the condition described in subdivision 1 of this subsection shall remain on the waiting

list until such time that results from the Chesapeake Bay Winter Dredge Survey indicate that an abundance of 200 million age 1+ blue crabs (blue crabs 2.4 inches and greater, in carapace width) has been attained in three consecutive, seasonal (December - March) surveys.

C. Any person receiving a crab license by lawful transfer in 2008 through 2010 also establishes his eligibility to purchase that specific license through 2010; however, any person either failing to register as a commercial fisherman in any year or lawfully transferring his crab license to another person shall forfeit his eligibility to purchase that specific crab license through 2010.

~~B.~~ D. Commercial licenses for crab pots, peeler pots, crab scrapes, crab traps, ordinary trot lines, patent trot lines, and crab dip nets may be transferred to an immediate family member of the licensee at any time and, in the case of death or incapacitation of the licensee, may be transferred to a registered commercial fisherman at any time. Crabbing licenses also may be transferred to another registered commercial fisherman, except that not more than 100 licenses shall be transferred in the current year. All such transfers shall be documented on forms provided by the commission and shall be subject to the approval of the commissioner.

4VAC20-1040-25. Appeal process.

Any registered commercial fisherman described in 4VAC20-1040-20 B 2 may appeal the status of his license ineligibility, to the commission, provided he documents one of the following conditions: (i) a health condition that prevented the registered commercial fisherman from harvesting any crabs during the 2004 through 2007 lawful crabbing seasons; (ii) an active military service that prevented the registered commercial fisherman from harvesting any crabs during the 2004 through 2007 lawful crabbing seasons; or (iii) a substantial error in his mandatory harvest reporting records.

VA.R. Doc. No. R09-1730; Filed December 1, 2008, 10:17 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Proposed Regulation

Title of Regulation: **6VAC20-260. Regulations Relating to Bail Enforcement Agents (adding 6VAC20-260-10 through 6VAC20-260-370).**

Statutory Authority: §§ 9.1-102 and 9.1-186.2 of the Code of Virginia.

Public Hearing Information:

March 12, 2009 - 11 a.m. - General Assembly Building, House Room D, 910 Capitol Street, Richmond, VA.

Public Comments: Public comments may be submitted until February 20, 2009.

Agency Contact: Lisa McGee, Section Chief, Private Security Services Section, Department of Criminal Justice Services, 202 North 9th Street, 5th Floor, Richmond, VA 23219, telephone (804) 371-2419, FAX (804) 786-6344, or email lisa.mcgee@dcjs.virginia.gov.

Basis: The legal authority to regulate bail enforcement agents is found in subdivision 47 of § 9.1-102 of the Code of Virginia, effective October 1, 2005, authorizing the department, under the direction of the board to license and regulate bail enforcement agents in accordance with Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia. The board is adopting regulations that are necessary to ensure respectable, responsible, safe and effective bail enforcement within the Commonwealth pursuant to § 9.1-186.2 of the Code of Virginia.

Purpose: The purpose of the proposed regulation is to regulate bail enforcement agents. The regulation establishes a licensure process to include a fingerprint-based background check, licensure fees, compulsory minimum entry-level training standards, and administration of the regulatory system. It authorizes the department to receive complaints concerning the conduct of any person whose activities are monitored by the board, to conduct investigations, to issue disciplinary action, and to revoke, to suspend, and to refuse to renew a license. These procedures are established to ensure respectable, responsible, safe and effective bail enforcement in the Commonwealth.

The regulations will help to ensure respectable, responsible, safe and effective bail enforcement within the Commonwealth. This regulatory action will result in verifying the qualifications of the individuals providing bail enforcement services through criminal history records checks and training, to ensure competency and prevent deceptive or unsafe practices towards the family unit.

Substance: The regulation establishes a licensure process, licensure fees, compulsory minimum entry-level training standards including firearms training and qualifications, standards of conduct, and administration of the regulatory system. It outlines procedures for receiving complaints concerning the conduct of any person whose activities are monitored by the board; procedures for conducting investigations; issuing disciplinary action; and revoking, suspending, refusing to renew a license, and provides an appeal process pursuant to the Administrative Process Act.

Issues: The primary advantage of implementing the new provisions presented in the proposed regulations is to provide

necessary public protection tasked through existing statutes. Advantages to the public and the Commonwealth are to ensure respectable, responsible, safe and effective bail enforcement in the Commonwealth. The goal of these regulations is to ensure eligible individuals in the bail enforcement industry receive compulsory minimum training, abide by established standards of conduct and ensure that individuals with certain criminal history records, or who are in violation of rules established for public safety are prohibited from performing bail enforcement services.

The establishment of these regulations does not pose any disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Regulation. Pursuant to legislation passed during the 2004 General Assembly session, the Criminal Justice Services Board (Board) proposes regulations for licensure of bail enforcement agents (bounty hunters).

Result of Analysis. There is insufficient data to weigh the magnitude of costs versus benefits for this proposed regulation. Costs and benefits are discussed below.

Estimated Economic Impact. Previous to October 2005, bounty hunters were not regulated by the Commonwealth. This proposed regulation replaces emergency regulations for licensure of bounty hunters and will require bounty hunters to:

- Be at least 21 years of age. Although bounty hunters must be at least 21 to be licensed, bail bondsmen are only required to be at least 18 years of age to be licensed and to engage in fugitive recovery.

- Have a General Equivalency Diploma (GED) or a high school diploma.

- Undergo a fingerprint background check through the Department of Criminal Justice Services (DCJS) (this costs $60). Individuals will not be allowed licensure if they have ever been convicted of a felony or, except in certain limited cases, if they have been convicted of a misdemeanor in the last five years. DCJS does have a limited ability to license individuals who have a misdemeanor conviction so long as that conviction is not for 1) carrying a concealed weapon 2) assault and battery 3) sexual battery 4) a drug offence 5) driving under the influence 6) discharging a firearm 7) a sex offence or 8) larceny. This requirement is apparently more restrictive than conviction requirements for any other DCJS licensure program.

- Undergo 40 hours of bail enforcement core training and 14 hours of firearms training (if they intend to carry a gun while acting as a bounty hunter).

- Take an exam (through DCJS).

- Pay a licensure fee of $200. An additional $30 must be paid on an annual basis if a bounty hunter wants a DCJS firearms endorsement.

- Undergo eight hours of in-service training before biannual license renewal (fee for license renewal will be $200). Bounty hunters who fail to complete in-service training, and pay the renewal fee, before their licenses expire will have 60 days to reinstate their licenses. The fee for this will be the cost of renewal plus 50% of the cost of renewal ($200 + $100 = $300). Bounty hunters who fail to renew their licenses either before the expiration of their license or during the reinstatement period will have to complete all 40 hours of bail enforcement core training again.

- Retain all records on fugitive recovery for at least three years (at a physical location known to DCJS).

The General Assembly is requiring licensure for bounty hunters because there have been a few rather notorious incidents in Virginia where bounty hunters mistakenly seized or tried to seize the wrong person. One of these incidents, in 2002, ended in the death of a Mexican immigrant in South Richmond. There have also been, in the past few years, some allegations of sexual misconduct by bounty hunters. These incidences appear to be anomalous and not indicative of how bond recovery usually happens: nonetheless, legislators believe that licensure with several restrictions as to who may be licensed will protect the public from possible harm.

Weighed against this possible benefit are the costs that will be incurred by bounty hunters, bail bondsmen, localities, the state and the tax-paying public.

Bounty hunters who are not restricted from licensure will incur all explicit fees and training costs plus the implicit costs of time spent on becoming and remaining licensed (time spent in training, filling out paperwork, etc.). It is likely that three quarters of the individuals who worked as bounty hunters before October 2005 would not have been eligible for licensure (see discussion below under Projected Impact on Employment). These people would likely choose to continue working at bail recovery if the Commonwealth were not prohibiting that choice. Because of this, these individuals have incurred costs equal to what they could have earned working as a bounty hunter minus whatever they earn in alternate employment.

Bail bondsmen will likely incur larger costs associated with a likely lower probability of being able to capture bonded fugitives and return them to court jurisdiction before bail is forfeited. The number of bounty hunters has likely dropped precipitously since licensure has been required (see discussion below under Projected Impact on Employment); this drop in supply of bounty hunters is likely to make their services more expensive to acquire and will also likely mean

that some fugitives who would otherwise be recaptured remain at large.

Additionally, since bounty hunting appears to be a job that attracts risk seeking individuals who live on the fringes of mainstream society (individuals who may be good at recovering fugitives because they, too, have been on the wrong side of the law and know how to think like a criminal), there may not be a large population of eligible individuals who would be as effective at fugitive recovery as those who are now ineligible for licensure were. Although bail bondsmen are able to engage in bond recovery, they will still incur costs if they choose to do this job themselves since time spent engaging in bond recovery cannot be spent engaging in writing bonds (an activity which likely has a higher return).

Localities and the state (and tax-paying citizens) will likely also incur costs associated with implementation of this proposed regulation (and its initiating legislation). Changes in the number and (potentially) the effectiveness of bounty hunters will likely mean that prisoners free on bond who choose to flee will be found and brought back for trial less often. When prisoners become fugitives, and remain at large, bail bondsmen have to forfeit their bonds to the court. Bail bondsmen are likely to respond to these monetary losses by refusing to offer bail to riskier prisoners. Other things remaining equal, this will mean that more prisoners will remain in jail longer or until their trial instead of being released. If this happens, and preliminary data would support that it will[1], the costs that localities and the state pay to house prisoners in jail will increase. The daily cost increase will be equal to the number of prisoners now housed (either until trial or during a more lengthy search for bond) rather than being released times the cost per day for housing, feeding clothing and guarding each prisoner in jail.

The public will also incur costs associated with possible increased fugitive rates. Although DCJS does not have information on individuals who fail to appear for court hearings or on individuals who are classified as fugitives because they remain at large for one year or longer, it is reasonable to assume that Virginia's numbers in these categories would be proportional to national numbers (after adjusting for types of release allowed in each state). Nationally, each year roughly one quarter (200,000) of all released felony defendants fail to appear for scheduled court hearings. Of these, approximately 30% (60,000) will remain at large for at least a year.[2] Virginia's portion of these individuals is a not-inconsiderable number. These fugitives impose significant costs on society. These costs would include those associated with lost court time and resources. Since approximately 16% of released defendants are rearrested for crimes committed while awaiting trial (and the actual percent of released individuals who commit crimes while awaiting trial is even higher than that), society also incurs a cost associated with higher crime. This cost may increase if fugitive rates for bonded defendants increase.

Whether the costs associated with licensing of bounty hunters outweigh the benefits will largely depend on whether licensure restrictions curtail further incidents of public harm caused by overzealous or unethical bounty hunters.

Businesses and Entities Affected. Bail bondsmen and bounty hunters currently practicing in the Commonwealth, as well as individuals who may want to join these occupations in the future, will be affected by the proposed regulation. Currently, DCJS licenses 378 bail bondsmen and 73 bounty hunters. Localities and the state will also likely be affected since these entities will absorb any extra jail expenditures brought about by the legislation that initiated this proposed regulation.

Localities Particularly Affected. Changes in the number and (potentially) the effectiveness of bounty hunters will likely mean that prisoners free on bond who choose to flee will be found and brought back for trial less often. When prisoners become fugitives, and remain at large, bail bondsmen have to forfeit their bonds to the court. Bail bondsmen are likely to respond to these monetary losses by refusing to offer bail to riskier prisoners. Other things remaining equal, this will mean that more prisoners will remain in jail longer or until their trial instead of being released. If this happens, and preliminary data would support that it will, the costs that localities and the state pay to house prisoners in jail will increase. The daily cost increase will be equal to the number of prisoners now housed (either until trial or during a more lengthy search for bond) rather than being released times the cost per day for housing, feeding clothing and guarding each prisoner in jail. This cost will likely fall disproportionately on localities that house their prisoners in regional jails.

Projected Impact on Employment. The legislation that initiated this proposed regulation has reduced the number of individuals employed as bounty hunters. The magnitude of this reduction is unknown since there is no data on the number of bounty hunters who practiced in the state before licensure. It is likely, however, that bounty hunters experienced at least as great a drop in numbers as did bail bondsmen post licensure. The number of bail bondsmen fell from around 1,300 pre-licensure to approximately 380 post-licensure. Assuming comparable decreases, there would have been approximately 250 bounty hunters practicing in the Commonwealth prior to licensure. Additionally, the number of bail bondsmen practicing in Virginia may fall further if bail defaults increase enough to drive defaulting bondsmen out of business.

Effects on the Use and Value of Private Property. The value of bail bondsmen businesses may decrease if bail defaults increase. Property bail bondsmen, in particular, may lose any property used to secure bonds for prisoners who skip out on their court dates and are not found.

Small Businesses: Costs and Other Effects. Bail bondsmen may incur costs associated with increased bail defaults. Bounty hunters will incur costs for keeping records on all bail

recoveries for three years as required by the proposed regulation. They will also incur explicit cost for training and licensure fees as well as opportunity costs associated with time spent getting and maintaining their licensure that could have been spent elsewhere.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Within the confines of legislative requirements for this licensure program, there is likely no alternate method that the Board could have employed to minimize most adverse effects of this regulatory program. The Board might choose to rewrite this proposed regulation to remove the requirement that bounty hunters who do not renew their licenses on time, or within the 60 day reinstatement period, take all initial core training again. Specifically, the costs associated with re-obtaining a license would be minimized if applicants only had to complete extra hours of core education if the core education requirements have increased since initial licensure was first obtained.

References. Hellend, Eric and Tabarrok, Alexander. "The Fugitive: Evidence of Public versus Private Law Enforcement from Bail Jumping." Journal of Law and Economics, Vol XLVII. April 2004.

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 21 (02). 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] Total jail populations grew at an average annual rate of 4.2% from FY 2001 through FY 2005. In FY 2006 (the year after implementation of bail enforcement agent licensure), total jail populations grew 9.96%. Growth rate changes for the jail subpopulation consisting of unsentenced individuals awaiting trial are even more startling. This subpopulation had an average annual growth rate of 4.3% from FY 2001 through FY 2005. In FY 2006, this subpopulation grew 12.7%. Jail populations have not experienced a comparable growth rate since FY 2000 when Virginia implemented bail reform.

[2] Source: Hellend and Tabarrok (2004)

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Criminal Justice Services concurs generally with the Economic Impact Analysis (EIA) of the Department of Planning and Budget on the proposed Regulations Relating to Bail Enforcement Agents with one exception.

Under the Small Businesses: Alternative Method that Minimizes Adverse Impact, DBP recommended that the agency remove the requirement that bounty hunters who do not renew their licenses on time or within the 60-day reinstatement period are then required to meet initial core training.

The provision in question is in reference to bail enforcement agent in-service training requirements. The applicants are required to take a 40-hour entry-level training prior to licensure. In order to renew the license, they are required to complete an eight-hour in-service training session during the last 12 months of a two-year license. The department had added the provision that if in-service training is not completed by their expiration date then they are required to meet all initial training requirements. This did not allow for any reinstatement period.

The Code of Virginia specifically provides that the department establish compulsory minimum training standards that shall ensure public safety and welfare from incompetent or unqualified persons engaging in bail enforcement activities. Furthermore, the department is required to ensure continued competency of the regulated community.

Section 9.1-186.6 of the Code of Virginia specifically states that prior to renewing the two-year license, the applicant must: complete eight hours of continuing education approved by the department and that any license not renewed by its expiration date shall terminate on such date.

This requirement was added to clarify to the applicant the penalty for not meeting renewal requirements and to encourage applicants to stay in compliance with the regulations. This is consistent with all other regulatory programs under the authority of the Private Security Services Section of the Department of Criminal Justice Services. They have 12 months to take an eight-hour course as well as a provision to extend this requirement under an emergency situation, such as illness, injury or active duty (6VAC 20-260-170), as well as a provision that they may receive alternate in-service credit for taking training that meets or exceeds the standards promulgated by the board (6VAC 20-260-150).

DPB's concern was over the provision that the requirement of retaking entry-level training again was too harsh a penalty. The agency agrees that it was too harsh to require entry-level training if requirements were not met by the expiration date of the license, but does not agree that it is too harsh a penalty to require entry-level training if training was not met within an additional 60-day reinstatement period after the expiration of the license. The agency has rewritten the regulations to incorporate a 60-day reinstatement period in which to meet renewal requirements.

Summary:

The proposed regulation establishes a licensure process, licensure fees, compulsory minimum entry-level training standards, including firearms training and qualifications, standards of conduct, and administration of the regulatory system. It provides procedures for receiving complaints concerning the conduct of any person whose activities are monitored by the board; conducting investigations; issuing disciplinary action; revoking, suspending, or refusing to renew a license; and an appeal process pursuant to the Administrative Process Act.

CHAPTER 260
REGULATIONS RELATING TO BAIL ENFORCEMENT AGENTS

Part I
Definitions

6VAC20-260-10. Definitions.

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

"Armed" means a bail enforcement agent who carries or has immediate access to a firearm in the performance of his duties.

"Bail bondsman" means any person who is licensed by the department who engages in the business of bail bonding and is thereby authorized to conduct business in all courts of the Commonwealth.

"Bail enforcement agent," also known as "bounty hunter," means any individual engaged in bail recovery.

"Bail recovery" means an act whereby a person arrests a bailee with the object of surrendering the bailee to the appropriate court, jail, or police department for the purpose of discharging the bailee's surety from liability on his bond. Bail recovery shall include investigating, surveilling or locating a bailee in preparation for an imminent arrest, with such object and for such purpose.

"Bailee" means a person who has been released on bail and who is or has been subject to a bond as defined in § 19.2-119 of the Code of Virginia.

"Board" means the Criminal Justice Services Board or any successor board or agency.

"Department" or "DCJS" means the Department of Criminal Justice Services or any successor agency.

"Firearms endorsement" means a method of regulation that identifies a person licensed as a bail enforcement agent who has successfully completed the annual firearms training and has met the requirements as set forth in this regulation.

"On duty" means the time during which bail enforcement agents receive or are entitled to receive compensation for employment for which licensure is required.

"Private security services training school" means a training school that is certified or licensed by the department for the specific purpose of training regulated personnel in at least one category of the compulsory minimum training standards.

Part II
Fees

6VAC20-260-20. Fees.

A. Schedule of fees. The following fees reflect the costs of handling, issuance, and production associated with administering and processing applications for licensing and other administrative requests for services relating to bail enforcement services:

Categories	Fees
Initial bail enforcement agent license	$200
Bail enforcement agent license renewal (biannually)	$200
Firearms endorsement (annually)	$30
Fingerprint card processing (biannually)	$50
Replacement photo identification	$30
Partial training exemption	$25
In-service alternative training credit	$25

B. Reinstatement fee.

1. The department shall collect a reinstatement fee for license renewal applications not received on or before the expiration date of the expiring license.

2. The reinstatement fee shall be 50% above and beyond the renewal fee of the license or any other credential issued by the department wherein a fee is established and renewal is required.

C. Dishonor of fee payment due to nonsufficient funds.

1. The department may suspend the license it has granted any person who submits a check or similar instrument for payment of a fee required by statute or regulation that is

not honored by the financial institution upon which the check or similar instrument is drawn.

2. The suspension shall become effective upon receipt of written notice of the dishonored payment. Upon notification of the suspension, the licensee may request that the suspended license or authority be reinstated, provided payment of the dishonored amount plus any penalties or fees required under the statute or regulation accompanies the request. Suspension under this provision shall be exempt from the Administrative Process Act.

Part III
Licensing Procedures and Requirements

6VAC20-260-30. Bail enforcement agent eligibility.

A. Persons required to be licensed pursuant to subdivision 47 of § 9.1-102 of the Code of Virginia as a bail enforcement agent shall meet all licensure requirements in this section. Persons who carry or have access to a firearm while on duty must have a valid license with a firearms endorsement as described under 6VAC20-260-80. If carrying a handgun concealed, the person must also have a valid concealed handgun permit and the written permission of his employer pursuant to § 18.2-308 of the Code of Virginia.

B. Each person applying for a bail enforcement agent license shall meet the minimum requirements for eligibility as follows:

1. Be a minimum of 21 years of age;

2. Be a United States citizen or legal resident alien of the United States;

3. Have received a high school diploma or GED; and

4. Have successfully completed all initial training requirements, including firearms endorsement if applicable, requested pursuant to the compulsory minimum training standards in Part IV (6 VAC 20-260-120 et seq.) of this regulation.

C. The following persons are not eligible for licensure as a bail enforcement agent and may not be employed by or serve as agents for a bail enforcement agent:

1. Persons who have been convicted of a felony within the Commonwealth, any other state, or the United States, who have not been pardoned, or whose civil rights have not been restored.

2. Persons who have been convicted of any misdemeanor within the Commonwealth, any other state, or the United States within the preceding five years. This prohibition may be waived by the department, for good cause shown, so long as the conviction was not for one of the following or a substantially similar misdemeanor: carrying a concealed weapon, assault and battery, sexual battery, a drug offense, driving under the influence, discharging a firearm, a sex offense, or larceny.

3. Persons who have been convicted of any misdemeanor within the Commonwealth, any other state, or the United States, that is substantially similar to the following: brandishing a firearm or stalking. The department may not waive the prohibitions under this subdivision.

4. Persons currently the subject of a protective order within the Commonwealth or another state.

5. Employees of a local or regional jail.

6. Employees of a sheriff's office or a state or local police department.

7. Commonwealth's attorneys and any employees of their offices.

8. Employees of the Department of Corrections, Department of Criminal Justice Services, or a local pretrial or community-based probation services agency.

D. The exclusions in subsection C of this section shall not be construed to prohibit law enforcement from accompanying a bail enforcement agent when he engages in bail recovery.

6VAC20-260-40. Initial bail enforcement agent license application.

Prior to the issuance of any bail enforcement agent license, each agent applicant shall:

1. File with the department a completed application for such license on the form and in the manner provided by the department;

2. Provide the address of a physical location in Virginia where records required to be maintained pursuant to 6VAC20-260-230 are kept and available for inspection by the department. A post office box is not a physical location;

3. Successfully complete entry-level training, and firearms training if applicable, pursuant to the compulsory minimum training standards set forth under Part IV (6VAC20-260-120 et seq.) of this regulation;

4. Submit fingerprints to the department pursuant to 6VAC20-260-50; and

5. Submit the appropriate nonrefundable application processing fee to the department.

6VAC20-260-50. Fingerprint processing.

A. Each person applying for licensure as a bail enforcement agent shall submit to the department:

1. One completed fingerprint card provided by the department or another electronic method approved by the department;

2. A fingerprint processing application;

3. The applicable nonrefundable fee; and

4. All criminal history conviction information on a form provided by the department.

B. The department shall submit those fingerprints to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the person or persons has a record of conviction.

C. Fingerprint cards found to be unclassifiable will suspend action on the application pending the resubmittal of a classifiable fingerprint card. The applicant shall be so notified in writing and shall submit a new fingerprint card within 30 days before the processing of his application shall resume. After 30 days, the initial fingerprint application process will be required to include applicable application fees.

D. If the applicant is denied by DCJS, the department will notify the applicant by letter regarding the reasons for the denial.

6VAC20-260-60. Application sanctions/denial, probation, suspension and revocation.

A. The department may deny a license in which any person has been convicted in any jurisdiction of any felony. Any plea of nolo contendere shall be considered a conviction for the purposes of this regulation. The record of a conviction, 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 conviction.

B. The department may deny a license in which any person (i) has not maintained good standing in every jurisdiction where licensed; (ii) has had his license denied upon initial application, suspended, revoked, surrendered, or not renewed; or (iii) has otherwise been disciplined in connection with a disciplinary action prior to applying for licensing in Virginia.

C. Any false or misleading statement on any state application or supporting documentation is grounds for denial or revocation and may be subject to criminal prosecution.

D. The department may deny licensure to a person for other just cause.

E. A licensee shall be subject to disciplinary action for violations or noncompliance with the Code of Virginia or this regulation. Disciplinary action shall be in accordance with procedures prescribed by the Administrative Process Act. The disciplinary action may include but is not limited to a letter of censure, fine, probation, suspension or revocation.

6VAC20-260-70. License issuance.

A. Upon completion of the initial license application requirements, the department may issue an initial license for a period not to exceed 24 months.

B. Each license shall be issued to the applicant named on the application and shall be valid only for the person named on the license. No license shall be assigned or otherwise transferred to another person.

C. Each licensee shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this regulation.

D. At the discretion of the department, a temporary license may be issued for a 30-day period while awaiting the results of the applicant's criminal history records search based on extenuating circumstances.

6VAC20-260-80. Firearms endorsement.

A. In addition to applying for a bail enforcement agent license, each applicant who carries or has access to a firearm while on duty must apply for such endorsement on a form and in the manner prescribed by the board and containing any information the board requires.

B. Prior to the issuance of a firearms endorsement, each applicant shall:

1. Successfully complete the entry-level firearms training pursuant to the compulsory minimum training standards as set forth in Part IV (6VAC20-260-120 et seq.) of this regulation; and

2. Submit the appropriate nonrefundable application processing fee to the department.

C. Upon completion of the application requirements, the department may issue a firearms endorsement for a period not to exceed 12 months.

D. Firearms endorsements may be reissued for a period not to exceed a period of 12 months when the applicant has met the following requirements:

1. Filed with the department a completed application for such endorsement on the form and in the manner provided by the department at least 30 days prior to expiration of the current endorsement;

2. Successfully completed the firearms retraining, pursuant to the compulsory minimum training standards set forth under Part IV (6VAC20-260-120 et seq.) of this regulation; and

3. Submitted the appropriate nonrefundable application processing fee to the department.

6VAC20-260-90. License renewal application.

A. The department should receive applications for licensure renewal at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address of the licensed person. However, if a renewal notification is not received by the person, it is the

responsibility of the person to ensure renewal requirements are filed with the department. License renewal applications must be received by the department and all license requirements must be completed prior to the expiration date or shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees. Outstanding fees or monetary penalties owed to DCJS must be paid prior to issuance of a renewal.

B. Each person applying for license renewal shall meet the minimum requirements for eligibility as follows:

1. Successfully complete the in-service training, and firearms retraining if applicable, pursuant to the compulsory minimum training standards set forth under Part IV (6VAC20-260-120 et seq.) of this regulation;

2. Be in good standing in every jurisdiction where licensed. This subdivision shall not apply to any probationary periods during which the person is eligible to operate under the license; and

3. Maintain eligibility pursuant to 6VAC20-260-30 B.

C. The department may renew a license when the department receives the following:

1. A properly completed renewal application provided by the department;

2. Fingerprint cards submitted pursuant to 6VAC20-260-50;

3. The applicable, nonrefundable license renewal fee; and

4. Proof of successful completion of the in-service training, pursuant to the compulsory minimum training standards set forth under Part IV (6VAC20-260-120 et seq.) of this regulation.

D. Upon completion of the renewal license application requirements, the department may issue a license for a period not to exceed 24 months.

E. Any renewal application received after the expiration date of a license shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

6VAC20-260-100. Replacement state-issued identification.

A licensed person seeking a replacement state-issued photo identification shall submit to the department:

1. A properly completed application provided by the department; and

2. The applicable, nonrefundable application fee.

6VAC20-260-110. Reinstatement.

A. A bail enforcement agent license not renewed on or before the expiration date shall become null and void. Pursuant to the Code of Virginia, all such persons must currently be licensed with the department to provide bail enforcement agent services.

B. A renewal application must be received by the department within 60 days following the expiration date of the license in order to be reinstated by the department, providing all renewal requirements have been met. Prior to reinstatement, the following shall be submitted to the department:

1. The appropriate renewal application and completion of renewal requirements, including required training pursuant to this chapter; and

2. The applicable, nonrefundable reinstatement fee pursuant to this chapter and in accordance with 6VAC20-260-20 B.

The department shall not reinstate renewal applications received after the 60-day reinstatement period has expired. It is unlawful to operate without a valid license including during a reinstatement period.

C. No license shall be renewed or reinstated when all renewal application requirements are received by the department more than 60 days following the expiration date of the license. After that date, the applicant shall meet all initial application requirements, including applicable training requirements.

D. Following submittal of all reinstatement requirements, the department will process and may approve any application for reinstatement pursuant to the renewal process for the application.

Part IV
Compulsory Minimum Training Standards for Bail Enforcement Agents

Article 1
Training Requirements

6VAC20-260-120. Entry-level training.

A. Each bail enforcement agent as defined by § 9.1-186 of the Code of Virginia must meet the compulsory minimum training standards established in this part unless provided for otherwise in accordance with this regulation.

B. Training will be credited only if application for licensure is submitted to the department within 12 months of completion of training.

C. The compulsory minimum entry-level training hour requirement by category, excluding examinations, practical exercises and range qualification, shall be:

1. Bail Enforcement Core Training -- 40 hours.

2. Firearms Training -- 14 hours.

D. The compulsory minimum entry-level training course content, excluding examinations, mandated practical

exercises and range qualification, shall be as provided in this subsection.

Core subjects. The entry-level curriculum sets forth the following areas identified as:

I. Orientation: ethics -- 2 hours

A. Ethics

1. Professionalism

2. Conflict of Interest

3. Code of Ethics

II. Law: Code of Virginia and Regulations; basic law; courts; and bail enforcement -- 12 hours + 1 practical exercise

A. Code of Virginia and Regulations

1. Definitions

2. Licensing Procedures and Requirements

3. Compulsory Minimum Training Standards

4. Standards of Practice and Prohibited Acts

5. Administrative Requirements/Standards of Conduct

6. Administrative Reviews, Complaints, Procedures

B. Basic Law

1. Legal Terminology and Definitions

2. Purpose and Function of Law

3. U.S. Constitution

a. Bill of Rights

b. Amendments

4. Code of Virginia

a. Bail Bonding Laws

b. Laws of Arrest

5. Landmark Cases

a. Taylor v. Taintor

b. Old Fugitive Slave Laws

6. Virginia Cases

7. Limitations and Liabilities

C. Courts

1. Federal Court System

a. Criminal

b. Civil

2. State Court System

a. Criminal

b. Civil

D. Bail Enforcement

1. Right to Arrest

2. Search and Seizure

3. Uniform Extradition Act

4. Virginia Extradition Procedures

5. Legal and Criminal Forms

III. Fugitive Recovery: investigative techniques; recovery procedures; agent survival; and apprehension of a fugitive -- 24 hours + 1 practical exercise

A. Investigative Techniques

1. Surveillance

2. Court Research

3. Law Enforcement Coordination

4. Interviewing

5. Impersonation and Misrepresentation

6. Reference Materials and Resource List

7. Skip Tracing Techniques

8. Fugitive Identification

B. Recovery Procedures

1. Pursuit

a. Foot

b. Vehicular

c. Other

2. Entry and Search

3. Perimeter/Interior Room Control

C. Agent Survival

1. Confrontation Management

2. Use of Force

3. Deadly Force

4. Escalation of Force

5. Emergency Procedures

D. Apprehension of a Fugitive

1. Compliant versus Noncompliant Procedures

2. Search of Person

a. Personal Items

b. Seizure of Contraband

3. Handcuffing Techniques

4. Rights of the Accused

5. Detainment and Transportation

6. Interstate Transport

7. False Arrest

IV. Remanding to Custody: legal detainment facilities; entering the jail or sally port; signing the bail piece/return to court; and hospital procedures for injuries -- 2 hours + 1 practical exercise

A. Legal Detainment Facilities

B. Entering the Jail or Sally Port

C. Signing the Bail Piece/Return to Court

D. Hospital Procedures for Injuries

V. Written Comprehensive Examination.

6VAC20-260-130. In-service training.

A. Each person licensed with the department as a bail enforcement agent shall complete the compulsory in-service training standards within the last 12 months preceding the expiration date of licensure.

B. The compulsory minimum in-service training course content by category, excluding examinations, practical exercises and range qualification, shall be as follows:

Bail enforcement core subjects:

1. Legal authority -- 2 hours

2. Job-related training -- 6 hours

Total hours -- 8 hours

6VAC20-260-140. Training exemption.

Persons who meet the statutory requirements as set forth in § 9.1-186 of the Code of Virginia may apply for a partial exemption from the compulsory training standards. Individuals requesting such partial exemption shall file an application furnished by the department and include the applicable, nonrefundable application fee. The department may issue such partial exemption on the basis of individual qualifications as supported by required documentation. Those applying for and receiving exemptions must comply with all regulations promulgated by the board. Each person receiving a partial exemption must apply to the department for registration within 12 months from the date of issuance; otherwise the partial exemption shall become null and void.

6VAC20-260-150. Entry-level training exemption.

A. Persons previously employed as law-enforcement officers for a local, state or federal government who have not terminated or been terminated from the employment more than five years prior to the application date must submit official documentation of the following with the application for partial exemption of the entry-level training requirements:

1. Completion of law-enforcement entry-level training; and

2. Five continuous years of law-enforcement employment, provided such employment as a law-enforcement officer was not terminated due to misconduct or incompetence.

B. Persons having previous bail enforcement agent training and five years continuous experience must submit official documentation of the following with the application for partial exemption:

1. Completion of previous bail enforcement agent training, which has been approved by the department and which meets or exceeds the compulsory minimum training standards promulgated by the board; and

2. Five years continuous experience in bail recovery, provided such experience did not end more then 12 months prior to submittal of licensure application.

6VAC20-260-160. In-service alternative training credit.

Persons who have completed training that meets or exceeds the compulsory minimum training standards promulgated by the board for the in-service training required for bail enforcement agents may be authorized credit for such training, provided the training has been completed within 12 months of the expiration date of the license period during which in-service training is required. Such training must be provided by a third party organization offering services or expertise for the particular training category. Official documentation of the following must accompany the application for in-service training credit:

1. Information regarding the sponsoring organization, including documentation regarding the instructor for each session;

2. An outline of the training session material, including the dates, times and specific subject matter;

3. Proof of attendance and successful completion; and

4. The applicable, nonrefundable application fee.

6VAC20-260-170. Prior firearms training exemption.

Persons having previous department-approved firearms training may be authorized credit for such training that meets or exceeds the compulsory minimum training standards for private security services business personnel, provided such training has been completed within the 12 months preceding the date of application. Official documentation of the following must accompany the application for partial in-service training credit:

1. Completion of department-approved firearms training; and

2. Qualification at a Virginia criminal justice agency, academy or correctional department.

6VAC20-260-180. Renewal extension.

A. An extension of the time period to meet in-service training requirements for renewal of a license may be approved only under specific circumstances that do not allow bail enforcement agents to complete the required renewal procedures within the prescribed time period. The following are the only circumstances for which extensions may be granted:

1. Extended illness,

2. Extended injury, or

3. Military deployment.

B. A request for extension shall:

1. Be submitted in writing, dated and signed by the licensee prior to the expiration date of the time limit required for completion of the requirements. This requirement may be waived by the department in cases of military deployment;

2. Indicate the projected date the person will be able to comply with the requirements; and

3. Include a copy of the physician's record of the injury or illness or a copy of the government orders.

C. No extension will be approved for licenses that have expired except in the cases involving military deployment.

D. Applications for additional extensions may be approved upon written request of the licensee.

E. Approved extensions may only be granted for a period not to exceed 12 months.

F. The bail enforcement agent shall be nonoperational during the period of extension.

Article 2
Firearms Training Requirements

6VAC20-260-190. General firearms training requirements.

Firearms training endorsement is required for all bail enforcement agents who carry or have access to a firearm while on duty. Each person who carries or has access to firearms while on duty shall qualify with each type of action and caliber of firearm to which he has access.

6VAC20-260-200. Firearms (handgun/shotgun) entry-level training.

All armed bail enforcement agents must satisfactorily complete the firearms classroom training, practical exercises and range training as prescribed in 6VAC20-171, Regulations Relating to Private Security Services, for handgun and for shotgun, if applicable, prior to the issuance of the firearms endorsement.

6VAC20-260-210. Firearms (handgun/shotgun) retraining.

On an annual basis all armed bail enforcement agents must requalify for a firearms endorsement by satisfactorily completing firearms classroom training, practical exercises and range training as prescribed in 6VAC20-171, Regulations Relating to Private Security Services, for handgun and for shotgun, if applicable.

Article 3
Training Sessions

6VAC20-260-220. Bail enforcement and firearms training sessions.

A. Training sessions will be conducted by private security services training schools certified or licensed under 6VAC20-171, Regulations Relating to Private Security Services, in accordance with requirements established in this chapter. Adherence to the administrative requirements, attendance and standards of conduct are the responsibility of the training school, training school director and instructor of the training session.

B. Administrative requirements.

1. In a manner approved by the department, a notification to conduct a training session shall be publicly accessible and submitted to the department upon request. All notifications shall be posted no less than seven calendar days prior to the beginning of each training session to include the date, time, instructors and location of the training session. The department may allow a session to be conducted with less than seven calendar days of notification with prior approval. A notification to conduct a training session shall be deemed to be in compliance unless the training school director is notified by the department to the contrary.

2. Notification of any changes to the dates, times, location or cancellation of a future training session must be made at least 24 hours in advance of the scheduled starting time of the class. In the event that a session must be cancelled on the scheduled date, the department must be notified immediately.

3. On a form provided by the department, the training school director shall issue an original training completion form and training certificate to each student who satisfactorily completes a training session no later than five business days following the training completion date.

4. In a manner approved by the department, the training school director shall maintain an original training completion roster and submit to the department upon

request, affirming each student's successful completion of the session.

5. A written examination shall be administered at the conclusion of each entry-level training session. The examination shall be based on the applicable learning objectives. The student must attain a minimum grade of 70% for all entry-level training examinations to satisfactorily complete the training session.

6. Firearms classroom training shall be separately tested and graded. Individuals must achieve a minimum score of 70% on the firearms classroom training examination.

7. Failure to achieve a minimum score of 70% on the firearms classroom written examination will exclude the individual from the firearms range training.

8. To successfully complete the firearms range training, the individual must achieve a minimum qualification score of 75% of the scoring value of the target.

9. To successfully complete the bail enforcement agent entry-level training session, the individual must:

a. Successfully complete each of the three graded practical exercises required, and

b. Pass the written examination with a minimum score of 70%.

C. Attendance.

1. Individuals enrolled in an approved training session are required to be present for the hours required for each training session unless they have been granted a partial exemption to training from the department.

2. Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to make up any training missed. Such training must be completed within 60 days after the completion of the training session or at the next available session offered by the training school. Individuals not completing the required training within this period are required to complete the entire training session.

3. Individuals who do not successfully complete the compulsory minimum training standards of the training session shall not be reported to the department except where required pursuant to this chapter.

4. Each individual attending an approved training session shall comply with the regulations promulgated by the board and any other rules within the authority of the training school. If the training school director or instructor considers a violation of the rules detrimental to the training of other students or to involve cheating on examinations, the training school director or instructor may expel the individual from the school. Notification of such action shall immediately be reported to the employing firms and the department.

D. Standards of conduct.

1. The training school, training school director and instructor shall at all times conform to the application requirements, administrative requirements and standards of conduct established for certification as a training school and instructor.

2. Training sessions will be conducted by certified instructors or other individuals authorized to provide instruction pursuant to this chapter.

3. Training sessions will be conducted utilizing lesson plans developed, including at a minimum the compulsory minimum training standards established pursuant to this chapter.

4. Instruction shall be provided in no less than 50-minute classes.

5. Training sessions may not exceed nine hours of classroom instruction per day. Range qualification and practical exercises shall not be considered classroom instruction; however, total training, including the maximum allotment of nine hours classroom instruction and applicable range qualification and practical exercises, shall not exceed 12 hours per day. This does not include time allotted for breaks, meals and testing.

6. All audiovisual training aids must be accompanied by a period of instruction where the instructor reviews the content of the presentation and the students are provided the opportunity to ask questions regarding the content.

7. A training session must adhere to the minimum compulsory training standards and must be presented in its entirety. Training school directors may require additional hours of instruction, testing or evaluation procedures.

8. A training session must provide accurate and current information to the students.

9. Mandated training conducted not in accordance with the Code of Virginia and this chapter is null and void.

10. A duplicate set of instructor course materials including all student materials shall be made available to any department inspector during the training session, if requested.

Part V
Recordkeeping Standards and Reporting Requirements

6VAC20-260-230. Reporting standards and requirements.

A. Each licensed bail enforcement agent shall report within 30 calendar days to the department any change in his residence, name, or business name or business address, and ensure that the department has the names and fictitious names

of all companies under which he carries out his bail recovery business.

B. Each licensed bail enforcement agent arrested or issued a summons for any crime shall report such fact within 30 calendar days to the department and shall report to the department within 30 days the facts and circumstances regarding the final disposition of his case.

C. Each licensed bail enforcement agent shall report to the department within 30 calendar days of the final disposition any administrative action taken against him by another governmental agency in this Commonwealth or in another jurisdiction. Such report shall include a copy of the order, consent to order or other relevant legal documents.

D. Each licensed bail enforcement agent shall report to the department within 24 hours any event in which he discharges a firearm during the course of his duties.

E. The bail enforcement agent shall retain, for a minimum of three calendar years from the date of a recovery, copies of all written documentation in connection with the recovery of a bailee pursuant to 6VAC20-260-260.

Part VI
Administrative Requirements; Standards of Conduct

6VAC20-260-240. General requirements.

All bail enforcement agents are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines and this regulation.

6VAC20-260-250. Professional conduct standards; grounds for disciplinary actions.

A. Any violations of the restrictions or standards under the Code of Virginia or this regulation shall be grounds for placing on probation, refusal to issue or renew, sanctioning, suspension or revocation of the bail enforcement agent's license. A licensed bail enforcement agent is responsible for ensuring that his employees, partners and individuals contracted to perform services for or on his behalf comply with all of these provisions and do not violate any of the restrictions that apply to bail enforcement agents. Violations by a bail enforcement agent's employee, partner, or agent may be grounds for disciplinary action against the bail enforcement agent, including probation, suspension or revocation of license.

B. A licensed bail enforcement agent shall not:

1. Engage in any fraud or willful misrepresentation, or provide materially incorrect, misleading, incomplete or untrue information in applying for an original license or renewal of an existing license, or in submitting any documents to the department.

2. Use any letterhead, advertising, or other printed matter in any manner representing that he is an agent, employee, or instrumentality of the federal government, a state, or any political subdivision of a state.

3. Impersonate, permit or aid and abet any employee to impersonate a law-enforcement officer or employee of the United States, any state, or a political subdivision of a state.

4. Use a name different from that under which he is currently licensed for any advertising, solicitation, or contract to secure business unless the name is an authorized fictitious name.

5. Coerce, suggest, aid and abet, offer promise of favor, or threaten any person to induce that person to commit any crime.

6. Give or receive, directly or indirectly, any gift of any kind to any nonelected public official or any employee of a governmental agency involved with the administration of justice, including but not limited to law-enforcement personnel, magistrates, judges, jail employees, and attorneys. De minimis gifts, not to exceed $50 per year per recipient, are acceptable provided the purpose of the gift is not to directly solicit business or would otherwise be a violation of department regulations or the laws of the Commonwealth.

7. Knowingly violate, advise, encourage, or assist in the violation of any statute, local jurisdictional law, court order, or injunction in the course of conducting activities regulated under this chapter.

8. Solicit business for an attorney in return for compensation.

9. Willfully neglect to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties, but if the bail enforcement agent chooses to withdraw from the case and returns the funds for work not yet done, no violation of this section exists.

10. Fail to comply with any of the statutory or regulatory requirements governing licensed bail enforcement agents.

11. Fail or refuse to cooperate with any investigation by the department.

12. Fail to comply with any subpoena issued by the department.

13. Employ or contract with any unlicensed or improperly licensed person or agency to conduct activities pertaining to bail enforcement services regulated in the Code of Virginia or this regulation, if the licensure status was known or could have been ascertained by reasonable inquiry.

14. Solicit or receive a bribe or other consideration in exchange for failing to recover or detain a bailee.

15. Provide false or misleading information to representatives of the department.

C. The department shall have the authority to place on probation, suspend or revoke a bail enforcement agent's license if an agent is arrested or issued a summons for a criminal offense, or becomes the subject of a protective order.

6VAC20-260-260. Recovery of bailees; methods of capture; standards and requirements; limitations.

A. During the recovery of a bailee, a bail enforcement agent shall have a copy of the relevant recognizance for the bailee. He shall also have written authorization from the bailee's bondsman, obtained prior to effecting the capture. The department shall develop the written authorization form to be used in such circumstances.

B. A bail enforcement agent shall not enter a residential structure without first verbally notifying the occupants who are present at the time of the entry.

C. Absent exigent circumstances, a bail enforcement agent shall give prior notification of at least 24 hours to local law enforcement or state police of the intent to apprehend a bailee. In all cases, a bail enforcement agent shall inform local law enforcement within 60 minutes of capturing a bailee.

D. In the apprehension of a bailee, the bail enforcement agent shall provide a written inventory of items taken into possession to both the bailee as well as the legal detainment facility.

E. A bail enforcement agent shall not utilize a canine or security rifle in the performance of bail recovery.

F. A bail enforcement agent may not transfer a bailee to an unlicensed bail bondsman or bail enforcement agent within the Commonwealth of Virginia.

G. A bail enforcement agent shall not break any laws of the Commonwealth in the act of apprehending a bailee.

H. A bail enforcement agent shall adhere to the recovery requirements pursuant to § 19.2-149 of the Code of Virginia.

I. A bail enforcement agent must complete and maintain the information on the recovery of a bailee on a form prescribed by the department.

6VAC20-260-270. Uniforms and identification; standards and restrictions.

A. A bail enforcement agent shall not wear, carry, or display any uniform, badge, shield, or other insignia or emblem that implies he is an agent of state, local, or federal government.

B. A bail enforcement agent shall wear or display only identification issued by, or whose design has been approved by, the department.

Part VII
Complaints, Department Actions, Adjudication

Article 1
Complaints

6VAC20-260-280. Submittal requirements.

A. Any aggrieved or interested person may file a complaint against any person whose conduct and activities are regulated or required to be regulated by the board. The complaint must allege a violation of the law governing bail enforcement services or this regulation.

B. Complaints may be submitted:

1. In writing, or on a form provided by the department, by a signed complainant;

2. In writing, submitted anonymously, that provide sufficient detailed information for the department to conduct an investigation; or

3. Telephonically, providing the complaint alleges activities that constitute a life-threatening situation, have resulted in personal injury or loss to the public or to a consumer, or may result in imminent harm or personal injury, and that provide sufficient detailed information for the department to conduct an investigation.

6VAC20-260-290. Department investigation.

A. The department may initiate or conduct an investigation based on any information received or action taken by the department to determine compliance with the Code of Virginia and this regulation.

B. Documentation.

1. Persons regulated or required to be regulated by this regulation pursuant to the Code of Virginia are required to provide department investigators with any and all records required to be maintained by this regulation.

a. This shall not be construed to authorize the department to demand records protected under applicable federal and state laws. If such records are necessary to complete an investigation, the department may seek a subpoena to satisfy the request.

b. The department shall endeavor to review, and request as necessary, only those records required to verify alleged violations of compliance with the Code of Virginia and this regulation.

2. The department shall endeavor to keep any documentation, evidence or information on an investigation confidential until such time as adjudication has been completed, at which time information may be

released upon request pursuant to applicable federal and state laws, rules or regulations.

Article 2
Department Actions

6VAC20-260-300. Penalties: criminal and monetary.

A. Any person who engages in bail recovery in the Commonwealth without a valid license issued by the department is guilty of a Class 1 misdemeanor. A third conviction under this section is a Class 6 felony.

B. Any person who violates any statute or board regulation who is not criminally prosecuted shall be subject to the monetary penalty provided in this section. If the board determines that a respondent is guilty of the violation complained of, the board shall determine the amount of the monetary penalty for the violation, which shall not exceed $2,500 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth.

6VAC20-260-310. Disciplinary action; sanctions; publication of records.

A. Each person subject to jurisdiction of this regulation who violates any statute or regulation pertaining to bail enforcement services shall be subject to sanctions imposed by the department regardless of criminal prosecution.

B. The department may impose any of the following sanctions, singly or in combination, when it finds the respondent in violation or in noncompliance of the Code of Virginia or of this regulation:

1. Letter of reprimand or censure;

2. Probation for any period of time;

3. Suspension of license or approval granted, for any period of time;

4. Revocation;

5. Refusal to issue or renew a license or approval;

6. Fine not to exceed $2,500 per violation as long as the respondent was not criminally prosecuted; or

7. Remedial training.

C. The department may conduct hearings and issue cease and desist orders to persons who engage in activities prohibited by this regulation but do not hold a valid license, certification or registration. Any person in violation of a cease and desist order entered by the department shall be subject to all of the remedies provided by law and, in addition, shall be subject to a civil penalty payable to the party injured by the violation.

D. The director (chief administrative officer of the department) may summarily suspend a license under this regulation without a hearing, simultaneously with the filing of a formal complaint and notice for a hearing, if the director finds that the continued operations of the licensee would constitute a life-threatening situation, or has resulted in personal injury or loss to the public or to a consumer, or which may result in imminent harm, personal injury or loss.

E. All proceedings pursuant to this section are matters of public record and shall be preserved. The department may publish a list of the names and addresses of all licensees whose conduct and activities are subject to this regulation and have been sanctioned or denied licensure or approval.

6VAC20-260-320. Fines: administrative and investigative costs.

The department may recover costs of any investigation and adjudication of any violations of the Code of Virginia or regulations that result in a sanction, including fine, probation, suspension, revocation or denial of any license. Such costs shall be in addition to any monetary penalty that may be imposed.

Article 3
Adjudication

6VAC20-260-330. Hearing process.

Following a preliminary investigative process, the department may initiate action to resolve the complaint through an informal fact-finding conference or formal hearing as established in this regulation. Pursuant to the authority conferred in § 9.1-141 C 6 of the Code of Virginia and in accordance with the procedures set forth by the Administrative Process Act and the procedures prescribed in this regulation, the department is empowered to receive, review, investigate and adjudicate complaints concerning the conduct of any person whose activities are regulated by the board. The board will hear and act upon appeals arising from decisions made by the director. In all case decisions, the Criminal Justice Services Board shall be the final agency authority.

6VAC20-260-340. Informal fact-finding conference.

The purpose of an informal fact-finding conference is to resolve allegations through informal consultation and negotiation. Informal fact-finding conferences shall be conducted in accordance with § 2.2-4019 of the Code of Virginia. The respondent, the person against whom the complaint is filed, may appeal the decision of an informal fact-finding conference and request a formal hearing, provided that written notification is given to the department within 30 days of the date the informal fact-finding decision notice was served, or the date it was mailed to the respondent, whichever occurred first. In the event the informal fact-finding decision was served by mail, three days shall be added to that period.

6VAC20-260-350. Formal hearing.

A. Formal hearing proceedings may be initiated in any case in which the basic laws provide expressly for a case decision or in any case to the extent the informal fact-finding conference has not been conducted or an appeal thereto has been timely received. Formal hearings shall be conducted in accordance with § 2.2-4020 of the Code of Virginia. The findings and decision of the director resulting from a formal hearing may be appealed to the board.

B. After a formal hearing pursuant to § 2.2-4020 of the Code of Virginia wherein a sanction is imposed to fine, or to suspend, revoke or deny issuance or renewal of any license or approval, the department may assess the holder thereof the cost of conducting such hearing when the department has final authority to grant such license, registration, certification or approval, unless the department determines that the offense was inadvertent or done in good faith belief that such act did not violate a statute or regulation. The cost shall be limited to (i) the reasonable hourly rate for the hearing officer and (ii) the actual cost of recording the proceedings. This assessment shall be in addition to any fine imposed by sanctions.

6VAC20-260-360. Appeals.

The findings and the decision of the director may be appealed to the board provided that written notification is given to the attention of the Director, Department of Criminal Justice Services, within 30 days following the date notification of the hearing decision was served or the date it was mailed to the respondent, whichever occurred first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

6VAC20-260-370. Court review; appeal of final agency order.

A. The final administrative decision may be appealed pursuant to § 2.2-4026 of the Code of Virginia.

B. Notification shall be given to the attention of the Director, Department of Criminal Justice Services, in writing within 30 days of the date notification of the board decision was served or the date it was mailed to the respondent, whichever occurred first. In the event the board decision was served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

C. During all judicial proceedings incidental to such disciplinary action, the sanctions imposed by the board shall remain in effect unless the court issues a stay of the order.

VA.R. Doc. No. R06-182; Filed December 3, 2008, 9:47 a.m.

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TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Proposed Regulation

Title of Regulation: **9VAC25-260. Water Quality Standards (adding 9VAC25-260-275).**

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

Public Hearing Information:

January 28, 2009 - 6 p.m. - Northampton High School Auditorium, 16041 Courthouse Road, Eastville, VA

Public Comments: Public comments may be submitted until 5 p.m. on February 20, 2009.

Agency Contact: Elleanore M. Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4116, or email emdaub@deq.virginia.gov.

Basis: Federal and state legal authority to promulgate this proposed regulation exists in the Clean Water Act at § 303(c), 40 CFR Part 131 and § 62.1-44.15(3a) of the Code of Virginia.

The scope and objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The Clean Water Act at § 303(c) (1) requires that the states hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards.

The scope of the federal regulations at 40 CFR Part 131 is to describe the requirements and procedures for developing, reviewing, revising and approving water quality standards by the states as authorized by § 303(c) of the Clean Water Act. 40 CFR Part 131 specifically requires the states to adopt criteria to protect designated uses.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. The State Water Control Law at § 62.1-44.15(3a) of the Code of Virginia requires the board to establish standards of quality and to modify, amend or cancel any such standards or policies. It also requires the board to hold public hearings from time to time for the purpose of reviewing the water quality standards, and, as appropriate, adopting, modifying or canceling such standards.

The authority to adopt standards as provided by the provisions in the previously referenced citations is mandated, although the specific standards to be adopted or modified are discretionary to the Environmental Protection Agency and the state.

Purpose: This amended regulation is essential to the protection of health, safety or welfare of the citizens of the Commonwealth. Proper water quality standards protect water quality and living resources of Virginia's waters for consumption of shellfish, recreational uses and conservation in general.

The goals of the proposal are to provide additional water quality protection for clams and oysters in waters on the Eastern Shore of Virginia and to ensure that the wastewater management disposal alternative chosen for that area has less of an environmental impact than another alternative. The proposal is intended to reduce condemnations on the Eastern Shore so more waters may be protected for clam and oyster production.

Substance: The substantive provisions to the regulation include a new section, 9VAC25-260-275, that applies to new or expanding individual VPDES permit applications discharging to or affecting waters on the Eastern Shore. This section is initiated when applications for new or expanded VPDES discharges to Eastern Shore waters are not denied pursuant to 9VAC25-260-270 but still result in a shellfish condemnation. These applications must have an analysis that shows if a wastewater management alternative other than a surface water discharge would be feasible, produce less of an environmental impact, and not result in significant social and economic impacts to beneficial uses and to the locality and its citizens.

9VAC25-260-275 also inserts an allowable phased approach to the analysis to help reduce costs to the localities and other applicants. First the feasibility of each alternative can be analyzed. If technically feasible, then the environmental, socio-economic and mitigation opportunities can be analyzed.

9VAC25-260-275 also describes the three scenarios that can result from the analysis and how each scenario proceeds. The first scenario is that the VPDES surface water discharge is the "best" option (the only technically feasible option or the best option for the environment). In that case, the VPDES application proceeds. The second scenario is that an alternative proves to be the best option for the environment but results in adverse socio-economic impact. In that case, the VPDES application proceeds. The third scenario is that an alternative to VPDES is the best option for the environment and causes no significant adverse socio-economic impact. In that case, a good faith effort must be made to pursue the alternative. If the alternative is disapproved by the appropriate regulatory authority, then the VPDES application proceeds.

The Notice of Intended Regulatory Action for this action indicated amendments to 9VAC25-370 were being considered; however, no changes were proposed to the Policy for the Protection of Water Quality in Virginia's Shellfish Growing Waters at 9VAC25-370.

Issues: The primary advantages to all aspects of the public are to help ensure protection of good water quality and reduce condemnations in Eastern Shore waters to promote clam and oyster growth for commercial and recreational uses. The primary disadvantages to the public, specifically businesses or localities applying for new or expanded discharges, is in the cost or impact of having to do an alternatives analysis if they fall under the requirements of this new section.

There are no advantages to the agency or Commonwealth. The disadvantage is that it will expend additional staff resources to implement this new requirement.

Eastern Shore localities must be aware of these requirements and consider these when planning for increased sewage disposal.

Requirements More Restrictive Than Federal: The requirement for a wastewater disposal management alternative analysis is more restrictive than applicable federal requirements. The rationale for the need was set forth by the Executive Office of the Commonwealth of Virginia to protect these sensitive good quality waters that are threatened by new or expanded wastewater discharges.

Localities Particularly Affected: There are localities particularly affected by this regulation as follows:

Accomack and Northampton counties and the towns of Accomac, Belle Haven, Bloxum, Cape Charles, Cheriton, Chincoteague, Eastville, Exmore, Hallwood, Keller, Melfa, Nassawadox, Onancock, Onley, Painter, Parksley, Saxis, Tangier, and Wachapreague.

Public Participation: In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping and other administrative costs; (ii) probable effect of the regulation on affected small businesses; and (iii) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public hearing or by mail, email or fax to Elleanore Daub, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4032 or email emdaub@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall website at www.townhall.virginia.gov. Written comments (including email) must include the name and address of the commenter. In order to be considered comments must be received by 5 p.m. on February 20, 2009.

A public hearing will be held on January 28, 2009, at 6 p.m., in the Northampton High School Auditorium, 16041 Courthouse Road, Eastville, VA. Both oral and written comments may be submitted at that time.

A formal hearing will be held at a time and place to be determined if a request for a formal hearing is received by the contact person listed above within 30 days of publication of the notice of public comment period in the Virginia Register of Regulations. The request for formal hearing is to include the information set forth in 9VAC25-230-130 B of the board's Procedure Rule No. 1.

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

Summary of the Proposed Amendments to Regulation. The State Water Control Board (board) seeks to amend the Water Quality Standards by designating special "shellfish aquaculture enhancement zones" on the Eastern Shore of Virginia. These zones would be granted additional protection by requiring applicants for permits to discharge into Eastern Shore waters to have completed a valid analysis of whether wastewater management alternatives other than a discharge would be technically feasible, produce less of an environmental impact, and not result in significant social and economic impacts to beneficial uses and to the locality and its citizens. If the analysis demonstrates that an alternative meets these criteria, then that alternative must be pursued for approval prior to the board taking action on the application to discharge into the shellfish aquaculture enhancement zone.

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

Estimated Economic Impact. The goal of this proposed regulation amendment is to improve the sustainability of aquaculture, while at the same time, preventing the shifting of the potential pollution impact from surface water to ground water. This proposal is the result of a Governor's initiative dating back to early 2006, and results from cooperation among the Secretaries of Natural Resources, Health and Human Resources, and Agriculture and Forestry.

The proposed change would modify criteria that are used to protect Eastern Shore waters that are used or could be used for shellfish aquaculture. If this amendment is promulgated, these waters which include all tidal rivers and creeks on the Eastern Shore (Accomack and Northampton Counties) including the tidal waters within the barrier islands on the eastern seaside of the Eastern Shore (does not include Atlantic Ocean waters) and all tidal rivers and creeks on the western bayside and including the Chesapeake Bay to a point one mile offshore from any point of land on the Eastern Shore would be designated as shellfish aquaculture enhancement zones.

The proposed requirement that discharge applicants seek alternative wastewater management methods if specified conditions are met would apply in situations where proposed discharges would result in shellfish condemnation by the Virginia Department of Health. In these situations, the applicant would need to first complete a valid analysis of whether wastewater management alternatives other than a discharge would be technically feasible. This phase would involve an assessment of the land availability for alternative treatment of surface water discharge and also the related soil composition and type. Such an assessment would cost approximately $30,000 and could vary based on the nature and size of expansion.[1] According to the Department of Environmental Quality applicants for discharge already do this when applying for discharge permits from DEQ. Thus the proposed technical feasibility analysis requirement would not in practice add cost.

If the technical feasibility analysis demonstrates that any of the identified alternatives are technically feasible, then the applicant is required to have an assessment of the environmental and socio-economic effects of adopting the select alternative technology conducted. Environmental analysis would include a review of groundwater impacts, swimming or recreational impacts and shellfish condemnations. Socio-economic impact analysis of any technically feasible alternative would include an analysis of the affordability of the land, technology, positive and negative tax revenue impacts to the locality, eco-tourism, recreation and aesthetics. Such an analysis that includes an accounting assessment of the technology options and mitigation measures and socio-economic welfare assessment for a typical proposed expansion of a locality's wastewater discharge would cost the applicant approximately $35,000 to $55,000.[2]

If the alternatives analysis demonstrates that the proposed new or expanded discharge into the shellfish aquaculture enhancement zone is the only technically feasible alternative or produces the least environmental impact of all the technically feasible alternatives, then the permit application for discharge into the shellfish aquaculture enhancement zone is processed in accordance with the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). If the analysis demonstrates that a technically feasible alternative produces less of an environmental impact than that associated with the proposed new or expanded discharge but results in significant adverse social and economic impacts to beneficial uses and to the locality and its citizens, then the permit application for discharge into the shellfish aquaculture enhancement zone is processed in accordance with the VPDES Permit Regulation. If the analysis demonstrates that a technically feasible alternative produces less of an environmental impact than that associated with the proposed new or expanded discharge and does not result in significant adverse social and economic impacts to beneficial uses and to the locality and its citizens, then processing of the VPDES application is suspended while the

applicant makes a good faith effort to obtain approval from the appropriate regulatory authorities for the alternative. Processing of the application shall be resumed only if the alternative form of wastewater management is disapproved by the appropriate regulatory authorities.

To the extent that alternative wastewater management methods are found that are technically feasible, less environmentally harmful, and do not cause significant adverse social and economic impacts to beneficial uses and to the locality and its citizens, the requirement that these alternative wastewater management methods are pursued when specified conditions are met may produce significant benefit for the aquaculture industry, consumers of clams and oysters, and the general public who seek recreation in the shellfish aquaculture enhancement zone. Some firms who supply environmental, social and economic impact analysis may benefit as well.

Some local governments, private builders and developers will encounter the additional cost of having an assessment of the environmental and socio-economic effects of adopting the select alternative wastewater management method. If alternative wastewater management methods are found that are technically feasible, less environmentally harmful, and do not cause significant adverse social and economic impacts to beneficial uses and to the locality and its citizens are found in practice, then the benefits to the environment, the aquaculture industry, consumers of clams and oysters, and the general public who seek recreation in the shellfish aquaculture enhancement zone will likely outweigh the cost to discharge applicants of the assessment of the environmental and socio-economic effects of adopting the select alternative wastewater management method.

Businesses and Entities Affected. The proposed amendment affects any public or private entity that proposes new construction or expansion of existing facilities to discharge sanitary waste into estuarine waters in Accomack or Northampton Counties, or close enough to such waters as to create the potential for bacterial contamination if there were a treatment plant failure. The proposal also potentially affects environmental engineering firms, economic consulting firms, aquaculture firms, and the general public who seek recreation in the shellfish aquaculture enhancement zone.

Localities Particularly Affected. The proposed amendments particularly affect Accomack and Northampton counties and the towns of Accomac, Belle Haven, Bloxum, Cape Charles, Cheriton, Chincoteague, Eastville, Exmore, Hallwood, Keller, Melfa, Nassawadox, Onancock, Onley, Painter, Parksley, Saxis, Tangier, and Wachapreague.

Projected Impact on Employment. Aquaculture firms will likely benefit by the proposed requirements in that fewer portions of tidal waters that have potential for aquaculture may be rendered unsuitable for aquaculture. In the long run this may increase employment in that industry. Demand for services from environmental engineering firms and economic consulting firms will likely moderately increase due to the proposed requirement for analysis of environmental, social and economic impacts of technically feasible alternatives. Consequently there may be a small increase in employment for some of these firms.

Effects on the Use and Value of Private Property. Aquaculture firms will likely benefit by the proposed requirements in that fewer portions of tidal waters that have potential for aquaculture may be rendered unsuitable for aquaculture. In the long run this may increase the growth and collection of edible clams and oysters, increasing the size and value of the aquaculture industry in Virginia. Demand for services from environmental engineering firms and economic consulting firms will likely moderately increase due to the proposed requirement for analysis of environmental, social and economic impacts of technically feasible alternatives. Consequently there may be a small increase in the value of some environmental engineering firms and economic consulting firms.

Small Businesses: Costs and Other Effects. Small aquaculture firms will likely benefit by the proposed requirements in that fewer portions of tidal waters that have potential for aquaculture may be rendered unsuitable for aquaculture. Some small environmental engineering firms and economic consulting firms may benefit by having greater demand for their services due to the proposed requirement for analysis of environmental, social and economic impacts of technically feasible alternatives.

Some small builders and developers considering doing business on the Eastern Shore will encounter greater costs if the technical feasibility analysis demonstrates that any of the identified alternatives are technically feasible.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed requirements will increase costs for small builders and developers doing business on the Eastern Shore; but there are no obvious alternative methods that would reduce the adverse impact and still produce the desired policy of greater protection of the shellfish aquaculture enhancement zones.

Real Estate Development Costs. The proposed requirements will in some incidences increase real estate development costs on the Eastern Shore. When the technical feasibility analysis demonstrates that any of the identified alternatives are technically feasible, then the discharge applicant is required to have an assessment of the environmental and socio-economic effects of adopting the select alternative technology conducted under the proposed regulations. Such analysis would cost the applicant approximately $35,000 to $55,000.[3]

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] Cost estimate from Department of Environmental Quality

[2] Ibid

[3] Cost estimate from Department of Environmental Quality

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

Summary:

The proposed amendments add a new section, 9VAC25-260-275, that is initiated when applications for new or expanded VPDES discharges to Eastern Shore waters are not denied pursuant to 9VAC25-260-270. If these discharges result in shellfish condemnations, then the applicant must analyze whether wastewater management alternatives other than a discharge would be feasible, produce less of an environmental impact, and not result in significant social and economic impacts to beneficial uses and to the locality and its citizens. If the analysis demonstrates that an alternative meets these criteria, then that alternative must be pursued for approval prior to the board taking action on the discharge alternative.

9VAC25-260-275. Protection of Eastern Shore tidal waters for clams and oysters.

A. This section applies to applications for individual Virginia Pollutant Discharge Elimination System (VPDES) permits authorizing new or expanded discharges to or otherwise affecting Eastern Shore tidal waters, which include all tidal rivers and creeks on the Eastern Shore (Accomack and Northampton counties) including the tidal waters within the barrier islands on the eastern seaside of the Eastern Shore (does not include Atlantic Ocean waters) and all tidal rivers and creeks on the western bayside and including the Chesapeake Bay to a point one mile offshore from any point of land on the Eastern Shore.

B. When such application proposes a new or expanded discharge that would not be denied pursuant to 9VAC25-260-270 but would result in shellfish water condemnation, then the application shall be amended to contain an analysis of wastewater management alternatives to the proposed discharge. An application shall be deemed incomplete until this analysis is provided to the department.

C. For purposes of this part, condemnation shall mean a reclassification of shellfish waters by the state Department of Health to prohibited or restricted (as defined by the U.S. Food and Drug Administration, National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish, 2005, Section II, Model Ordinance, Definitions, and Chapter 4, Classification of Shellfish Growing Areas) thereby signifying that shellfish from such waters are unfit for market.

D. The alternatives analysis shall first identify and describe the technical feasibility of each wastewater management alternative to the proposed new or expanded discharge. If the analysis demonstrates that any of the identified alternatives are technically feasible, then the analysis shall further describe the environmental, social and economic impacts and opportunities to mitigate any adverse impacts for those alternatives.

E. If the alternatives analysis demonstrates that the proposed new or expanded discharge is the only technically feasible alternative or produces the least environmental impact of all the technically feasible alternatives, the application will be processed in accordance with 9VAC25-31 (VPDES Permit Regulation). If the analysis demonstrates that a technically feasible alternative produces less of an environmental impact than that associated with the proposed new or expanded discharge but results in significant adverse social and economic impacts to beneficial uses and to the locality and its citizens, the application shall be processed in accordance with 9VAC25-31. If the analysis demonstrates that a technically feasible alternative produces less of an environmental impact than that associated with the proposed new or expanded discharge and does not result in significant adverse social and economic impacts to beneficial uses and to the locality and its citizens, then processing of the VPDES application shall be suspended while the applicant makes a good faith effort to obtain approval from the appropriate regulatory authorities for the alternative. Processing of the application shall be resumed only if the alternative form of wastewater management is disapproved by the appropriate regulatory authorities.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-260)

Chesapeake Bay Program Analytical Segmentation Scheme -- Revisions, Decisions and Rationales 1983-2003, EPA CBP/TRS 268/04, October 2004.

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-03-002, April 2003 and 2004 Addendum, October 2004.

Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability, EPA 903-R-03-004, October 2003 and 2004 Addendum, October 2004.

Guide for the Control of Molluscan Shellfish, 2005 (Section II. Model Ordinance and Chapter 4. Classification of Shellfish Growing Areas), U.S. Food and Drug Administration, National Shellfish Sanitation Program.

VA.R. Doc. No. R08-783; Filed December 3, 2008, 11:30 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-320; adding 12VAC30-50-330 through 12VAC30-50-360).**

12VAC30-120. Waivered Services (repealing 12VAC30-120-61 through 12VAC30-120-68).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on January 21, 2009.

Effective Date: February 5, 2009.

Agency Contact: Deborah Pegram, Long-Term Care Services Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-2912, FAX (804) 786-1680, or email deborah.pegram@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.

Purpose: The amended regulation is required in order to meet CMS' requirements to have the PACE program categorized as a State Plan optional service and not a waiver service. These regulations must be promulgated to accomplish this action.

The purpose of PACE is to provide a community-based alternative to nursing facility care that integrates primary and long-term care services within Medicaid, but excludes Medicare financing and services. Sentara Senior Community Care, a pre-PACE provider in the Tidewater area, served 122 enrolled participants in FY 06 at a cost of $3.4 million for an average of approximately $27,655 per person. PACE combines Medicaid and Medicare funding to provide all medical, social, and long-term care services through an adult day health care center (ADHC). The pre-PACE and PACE programs allows elders to remain in familiar surroundings; maintain self-sufficiency; and preserve the highest level of physical, social, and cognitive function and independence. A nursing facility preadmission screening team must authorize PACE services. In order to continue the PACE program DMAS must move the PACE regulations out of the waiver services section of the Virginia Administrative Code and into the State Plan services section of the Administrative Code.

Rationale for Using Fast-Track Process: The fast-track regulatory process is required in order to bring the PACE regulation into compliance with DMAS' approved State Plan amendment. Except as noted for 12VAC30-120-67 in the "Substance" statement below, no language is being substantively amended; technical and grammatical changes are being recommended in four places. The primary intent of the proposed action is to move the PACE regulation from the waiver section of DMAS regulations to the State Plan section.

Substance: 12VAC30-120-67, PACE catastrophic coverage limitation, is being repealed. The remaining PACE regulations are being moved from the waiver section to the State Plan section.

In addition, four technical changes are being recommended:

1. In the "Definitions" section (12VAC30-50-330), "all" is added to the "capitation rate" definition to clarify that all necessary services are provided to PACE participants within the negotiated monthly per capita amount. This is the original intent and is clearly stated in the Request for Proposals.

2. In the "Definitions" section, "by" is added to the definition for the "PACE plan feasibility study" to correct a grammatical error.

3. Also in the "Definitions" section, "provider" is defined. The definition is taken from other existing waiver regulations and was inadvertently omitted.

4. In response to a request by the Centers for Medicare and Medicaid (CMS), in the "General PACE Plan Requirements" section at 12VAC30-50-335, "prior to the beginning of employment" is added to the existing requirement for the criminal record check process for providers and employees. This clarifies the intent of the existing language and brings the regulation into compliance with CMS requirements.

Issues: The movement of this regulation is to maintain department efforts to improve the infrastructure for community-based long-term support services by making the PACE regulation a State Plan option, allowing the state additional flexibility within the program. The PACE program creates a system of long-term services and supports that enables the elderly to remain in the community rather than in a more costly and less restrictive institutional setting.

This proposal supports Virginia's implementation of the Olmstead decision and complements the efforts of the recently awarded Systems Transformation Grant and Money Follows the Person Demonstration that both intend to improve the infrastructure for community-based long-term support services.

There are no disadvantages to the public or the Commonwealth.

This proposed regulatory action will have a positive impact on families in allowing individuals facing institutional placement an additional home and community-based option.

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

Summary of the Proposed Amendments to Regulation. The proposed changes will move the PACE regulations from the waiver section of Medicaid regulations to the State Plan for Medical Assistance Services section.

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

Estimated Economic Impact. Program of All-Inclusive Care for the Elderly (PACE) provides community based services that are alternative to nursing facility care to the recipients through an adult day health care center.

The PACE program started as a waiver program and its rules were placed in the waiver section of Medicaid regulations (12VAC30-120). On January 1, 2007, the Centers for Medicare and Medicaid (CMS) allowed Virginia to offer PACE program as an optional State Plan service rather than a waiver service. Consequently, the proposed changes will move the PACE rules into the section of Medicaid regulations where State Option service regulations are housed (12VAC30-50).

A waiver service, unlike a state plan service, waives either one of the three primary federal limitations: statewideness; comparability of services, and free choice of providers. So, making a waiver service a state plan service would normally mean a change in statewideness, comparability of services, or free choice of providers. However, in this particular case, CMS granted exemptions so that there was no change in statewideness, comparability of services, and free choice of providers. In short, the proposed movement of the regulations will produce no change in practice. Thus, no significant economic effect is expected from the proposed regulations other than providing a small benefit in terms of the consistency in housing all of the state option services under the same section.

Businesses and Entities Affected. The proposed regulations apply to PACE providers and recipients. In 2006, there were one provider and 122 enrollees.

Localities Particularly Affected. The regulations apply throughout the Commonwealth, but, the only provider was located in Tidewater area.

Projected Impact on Employment. No significant effect on employment is expected.

Effects on the Use and Value of Private Property. No significant effect on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. Proposed regulations have no costs or other effects on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Proposed regulations have no adverse impact on small businesses.

Real Estate Development Costs. Proposed regulations have no real estate development costs.

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

reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Program of All-Inclusive Care for the Elderly (PACE) as State Plan Service (12VAC30-50-320, 12VAC30-50-330, 12VAC30-50-335, 12VAC30-50-340, 12VAC30-50-345, 12VAC30-50-350, 12VAC30-50-355, 12VAC30-50-360, and 12VAC30-120-61, 12VAC30-120-62, 12VAC30-120-63, 12VAC30-120-64, 12VAC30-120-65, 12VAC30-120-66, 12VAC30-120-67, and 12VAC30-120-68).

Summary

The amendments (i) move the Program of All-Inclusive Care for the Elderly (PACE) regulations from the waiver services section of the Department of Medical Assistance Services' (DMAS') regulations to the State Plan for Medical Assistance Services section, (ii) repeal 12VAC30-120-67 (PACE catastrophic coverage limitation), (iii) make technical changes to the definitions section, and (iv) require that the existing criminal record check process for providers and employees by conducted prior to the beginning of employment.

12VAC30-50-320. Program of All-Inclusive Care for the Elderly (PACE).

The Commonwealth of Virginia has ~~not~~ entered into a valid program agreement or agreements with a PACE provider or providers and the Secretary of the U.S. Department of Health and Human Services.

12VAC30-50-330. PACE definitions.

For purposes of this part and all contracts establishing the Program of All-Inclusive Care for the Elderly (PACE) programs as defined in 42 CFR Part 460, the following definitions shall apply:

"Adult day health care center" or "ADHC" means a DMAS-enrolled provider that offers a community-based day program providing a variety of health, therapeutic, and social services designed to meet the specialized needs of those elderly and disabled individuals at risk of placement in a nursing facility. The ADHC must be licensed by the Virginia Department of Social Services as an adult day care center (ADC) as defined in 22VAC40-60-10.

"Applicant" means an individual seeking enrollment in a PACE plan.

"Capitation rate" means the negotiated Medicaid monthly per capita amount paid to a PACE provider for all services provided to enrollees.

"Catchment area" means the designated service area for a PACE plan.

"Centers for Medicare and Medicaid Services" or "CMS" means the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

"CFR" means the Code of Federal Regulations.

"DMAS" means the Department of Medical Assistance Services.

"DSS" means the Department of Social Services.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees;" (iv) offering financial incentives, rewards, gifts or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual or family/caregiver for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.

"Enrollee" means a Medicaid-eligible individual meeting PACE enrollment criteria and receiving services from a PACE plan.

"Full disclosure" means fully informing all PACE enrollees at the time of enrollment that, pursuant to § 32.1-330.3 of the Code of Virginia, PACE plan enrollment can only be guaranteed for a 30-day period.

"Imminent risk of nursing facility placement" means that an individual will require nursing facility care within 30 days if a community-based alternative care program, such as a PACE plan, is not available.

"PACE" means a Program of All-Inclusive Care for the Elderly. PACE services are designed to enhance the quality of life and autonomy for frail, older adults; maximize dignity of, and respect for, older adults; enable frail, older adults to live in the community as long as medically and socially feasible; and preserve and support the older adult's family unit.

"PACE plan" means a comprehensive acute and long-term care prepaid health plan, pursuant to § 32.1-330.3 of the Code

of Virginia and as defined in 42 CFR 460.6, operating on a capitated payment basis through which the PACE provider assumes full financial risk. PACE plans operate under both Medicare and Medicaid capitation.

"PACE plan contract" means a contract, pursuant to § 32.1-330.3 of the Code of Virginia, under which an entity assumes full financial risk for operation of a comprehensive acute and long-term care prepaid health plan with capitated payments for services provided to Medicaid enrollees being made by DMAS. The parties to a PACE plan contract are the entities operating the PACE plan, DMAS and CMS.

"PACE plan feasibility study" means a study performed by a research entity approved by DMAS to determine a potential PACE plan provider's ability and resources, or lack thereof, to effectively operate a PACE plan. All study costs are the responsibility of the potential PACE provider.

"PACE protocol" means the protocol for the Program of All-Inclusive Care for the Elderly, as published by On Lok, Inc., as of April 14, 1995, or any successor protocol that may be agreed upon by the federal Secretary of Health and Human Services and On Lok, Inc.

"PACE site" means the location, which includes a primary care center, where the PACE provider both operates the PACE plan's adult day health care center and coordinates the provision of core PACE services, including the provision of primary care.

"PACE provider" means the entity contracting with the Department of Medical Assistance Services to operate a PACE plan.

"Plan of care" means the written plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety while receiving services from the provider.

"Preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screenings; (ii) assist individuals in determining what specific services individuals need; (iii) evaluate whether a service or a combination of existing community-based services are available to meet the individual's needs; (iv) refer individuals to the appropriate provider for Medicaid-funded nursing facility or home and community-based care for those individuals who meet nursing facility level of care.

"Preadmission screening team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to § 32.1-330 of the Code of Virginia.

"Primary care provider" or "PCP" means the individual responsible for the coordination of medical care provided to an enrollee under a PACE plan.

"Provider" means the individual or other entity registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"State Plan for Medical Assistance" or "the Plan" means the Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Virginia Uniform Assessment Instrument" or "UAI" means the standardized, multidimensional questionnaire that assesses an individual's social, physical and mental health, and functional abilities.

12VAC30-50-335. General PACE plan requirements.

A. DMAS, the state agency responsible for administering Virginia's Medicaid program, shall only enter into PACE plan contracts with approved PACE plan providers. The PACE provider must have an agreement with CMS and DMAS for the operation of a PACE program. The agreement must include:

1. Designation of the program's service area;

2. The program's commitment to meet all applicable federal, state, and local requirements;

3. The effective date and term of the agreement;

4. The description of the organizational structure;

5. Participant bill of rights;

6. Description of grievance and appeals processes;

7. Policies on eligibility, enrollment, and disenrollment;

8. Description of services available;

9. Description of quality management and performance improvement program;

10. A statement of levels of performance required on standard quality measures;

11. CMS and DMAS data requirements;

12. The Medicaid capitation rate and the methodology used to calculate the Medicare capitation rate;

13. Procedures for program termination; and

14. A statement to hold harmless CMS, the state, and PACE participants if the PACE organization does not pay for services performed by the provider in accordance with the contract.

B. A PACE plan feasibility study shall be performed before DMAS enters into any PACE plan contract. DMAS shall contract only with those entities it determines to have the ability and resources to effectively operate a PACE plan. A feasibility plan shall only be submitted in response to a Request for Applications published by DMAS.

C. PACE plans shall offer a voluntary comprehensive alternative to enrollees who would otherwise be placed in a nursing facility. PACE plan services shall be comprehensive and offered as an alternative to nursing facility admission.

D. All Medicaid-enrolled PACE participants shall continue to meet the nonfinancial and financial Medicaid eligibility criteria established by federal law and these regulations. This requirement shall not apply to Medicare only or private pay PACE participants.

E. Each PACE provider shall operate a PACE site that is in continuous compliance with all state licensure requirements for that site.

F. Each PACE provider shall offer core PACE services as described in 12VAC30-50-345 B through a coordination site that is licensed as an ADHC by DSS.

G. Each PACE provider shall ensure that services are provided by health care providers and institutions that are in continuous compliance with state licensure and certification requirements.

H. Each PACE plan shall meet the requirements of §§ 32.1-330.2 and 32.1-330.3 of the Code of Virginia and 42 CFR Part 460.

I. All PACE providers must meet the general requirements and conditions for participation pursuant to the required contracts by DMAS and CMS. All providers must sign the appropriate participation agreement. All providers must adhere to the conditions of participation outlined in the participation agreement and application to provide PACE services, DMAS regulations, policies and procedures, and CMS requirements pursuant to 42 CFR Part 460.

J. Requests for participation as a PACE provider will be screened by DMAS to determine whether the provider applicant meets these basic requirements for participation and demonstrates the abilities to perform, at a minimum, the following activities:

1. Immediately notify DMAS, in writing, of any change in the information that the provider previously submitted to DMAS.

2. Assure freedom of choice to individuals in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services are performed.

3. Assure the individual's freedom to refuse medical care, treatment, and services.

4. Accept referrals for services only when qualified staff is available to initiate and perform such services on an ongoing basis.

5. Provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000 et seq.), which prohibits discrimination on the grounds of race, color, religion, sexual orientation or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act of 1990, as amended (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. Provide services and supplies to individuals of the same quality and in the same mode of delivery as is provided to the general public.

7. Use only DMAS-designated forms for service documentation. The provider must not alter the DMAS forms in any manner unless approval from DMAS is obtained prior to using the altered forms.

8. Not perform any type of direct marketing activities to Medicaid individuals.

9. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided.

a. In general, such records shall be retained for at least six years from the last date of service or as provided by applicable federal and state laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years. However, records for Medicare Part D shall be maintained for 10 years in accordance with 42 CFR 423.505(d).

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review. The location, agent, or trustee shall be within the Commonwealth.

10. Furnish information on request and in the form requested to DMAS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement.

11. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions,

or other legal entities providing any form of health care services to individuals of Medicaid.

12. Pursuant to 42 CFR 431.300 et seq., 12VAC30-20-90, and any other applicable federal or state law, all providers shall hold confidential and use for authorized DMAS purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits, or the data are necessary for the functioning of DMAS in conjunction with the cited laws.

13. CMS and DMAS shall be notified in writing of any change in the organizational structure of a PACE provider organization at least 14 calendar days before the change takes effect.

14. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider participation agreements and in the applicable DMAS provider manual. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies. A provider's noncompliance with DMAS policies and procedures may result in a retraction of Medicaid payment or termination of the provider agreement, or both.

15. Minimum qualifications of staff.

a. All employees must have a satisfactory work record as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of vulnerable adults and children. Prior to the beginning of employment, a criminal record check shall be conducted for the provider and each employee and made available for review by DMAS staff. Providers are responsible for complying with the Code of Virginia and state regulations regarding criminal record checks and barrier crimes as they pertain to the licensure and program requirements of their employees' particular practice areas.

b. Staff must meet any certifications, licensure, registration, etc., as required by applicable federal and state law. Staff qualifications must be documented and maintained for review by DMAS or its authorized contractors.

16. At the time of their admission to services, all providers participating in the Medicare and Medicaid programs must provide adult individuals with written information regarding each individual's right to make medical care decisions, including the right to accept or refuse medical treatment and the right to formulate advance directives.

K. Provider's conviction of a felony. The Medicaid provider agreement shall terminate upon conviction of the provider of a felony pursuant to § 32.1-325 of the Code of Virginia. A provider convicted of a felony in Virginia or in any other of the 50 states, the District of Columbia, or the U.S. territories must, within 30 days, notify the Virginia Medicaid Program of this conviction and relinquish the provider agreement. In addition, termination of a provider participation agreement will occur as may be required for federal financial participation.

L. Ongoing quality management review. DMAS shall be responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for participation agreement renewal with DMAS to provide PACE services.

M. Reporting suspected abuse or neglect. Pursuant to §§ 63.2-1508 through 63.2-1513 and 63.2-1606 of the Code of Virginia, if a participating provider entity suspects that a child or vulnerable adult is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately to DSS and to DMAS. In addition, as mandated reporters for vulnerable adults, participating providers must inform their staff that they are mandated reporters and provide education regarding how to report suspected adult abuse, neglect, or exploitation pursuant to § 63.2-1606 F of the Code of Virginia.

N. Documentation requirements. The provider must maintain all records of each individual receiving services. All documentation in the individual's record must be completely signed and dated with name of the person providing the service, title, and complete date with month, day, and year. This documentation shall contain, up to and including the last date of service, all of the following:

1. The most recently updated Virginia Uniform Assessment Instrument (UAI), all other assessments and reassessments, plans of care, supporting documentation, and documentation of any inpatient hospital admissions;

2. All correspondence and related communication with the individual and, as appropriate, consultants, providers, DMAS, DSS, or other related parties; and

3. Documentation of the date services were rendered and the amount and type of services rendered.

12VAC30-50-340. Criteria for PACE enrollment.

A. Eligibility shall be determined in the manner provided for in the State Plan and these regulations. To the extent these regulations differ from other provisions of the State Plan for purposes of PACE eligibility and enrollment, these regulations shall control.

B. Individuals meeting the following nonfinancial criteria shall be eligible to enroll in PACE plans approved by DMAS:

1. Individuals who are age 55 or older;

2. Individuals who require nursing facility level of care and are at imminent risk of nursing facility placement as determined by a nursing home preadmission screening team through a nursing home preadmission screening performed using the UAI;

3. Individuals for whom PACE plan services are medically appropriate and necessary because without the services the individual is at imminent risk of nursing facility placement;

4. Individuals who reside in a PACE plan catchment area;

5. Individuals who meet other criteria specified in a PACE plan contract;

6. Individuals who participate in the Medicaid or Medicare programs as specified in § 32.1-330.3 E of the Code of Virginia; and

7. Individuals who voluntarily enroll in a PACE plan and agree to the terms and conditions of enrollment.

C. To the extent permitted by federal law and regulation, individuals meeting the following financial criteria shall be eligible to enroll in PACE plans approved by DMAS:

1. Individuals whose income is determined by DMAS under the provision of the State Plan to be equal to or less than 300% of the current Supplemental Security Income payment standard for one person; and

2. Individuals whose resources are determined by DMAS under the provisions of the State Plan to be equal to or less than the current resource allowance established in the State Plan.

D. For purposes of a financial eligibility determination, applicants shall be considered as if they are institutionalized for the purpose of applying institutional deeming rules.

E. DMAS shall not pay for services provided to an applicant by a PACE contractor if such services are provided prior to the PACE plan authorization date set by the nursing home preadmission screening team.

12VAC30-50-345. PACE enrollee rights.

A. PACE providers shall ensure that enrollees are fully informed of their rights and responsibilities in accordance with all state and federal requirements. These rights and responsibilities shall include, but not be limited to:

1. The right to be fully informed at the time of enrollment that PACE plan enrollment can only be guaranteed for a 30-day period pursuant to § 32.1-330.3 F of the Code of Virginia;

2. The right to receive PACE plan services directly from the provider or under arrangements made by the provider; and

3. The right to be fully informed in writing of any action to be taken affecting the receipt of PACE plan services.

B. PACE providers shall notify enrollees of the full scope of services available under a PACE plan, as described in 42 CFR 460.92. The services shall include, but not be limited to:

1. Medical services, including the services of a PCP and other specialists;

2. Transportation services;

3. Outpatient rehabilitation services, including physical, occupational and speech therapy services;

4. Hospital (acute care) services;

5. Nursing facility (long-term care) services;

6. Prescription drugs;

7. Home health services;

8. Laboratory services;

9. Radiology services;

10. Ambulatory surgery services;

11. Respite care services;

12. Personal care services;

13. Dental services;

14. Adult day health care services, to include social work services;

15. Interdisciplinary case management services;

16. Outpatient mental health and mental retardation services;

17. Outpatient psychological services;

18. Prosthetics; and

19. Durable medical equipment and other medical supplies.

C. Services available under a PACE plan shall not include any of the following:

1. Any service not authorized by the interdisciplinary team unless such service is an emergency service (i.e., a service provided in the event of a situation of a serious or urgent nature that endangers the health, safety, or welfare of an individual and demands immediate action);

2. In an inpatient facility, private room and private duty nursing services unless medically necessary, and nonmedical items for personal convenience such as telephones charges and radio or television rental, unless specifically authorized by the interdisciplinary team as part of the participant's plan of care;

3. Cosmetic surgery except as described in agency guidance documents;

4. Any experimental medical, surgical or other health procedure; and

5. Any other service excluded under 42 CFR 460.96.

D. PACE providers shall ensure that PACE plan services are at least as accessible to enrollees as they are to other Medicaid-eligible individuals residing in the applicable catchment area.

E. PACE providers shall provide enrollees with access to services authorized by the interdisciplinary team 24 hours per day every day of the year.

F. PACE providers shall provide enrollees with all information necessary to facilitate easy access to services.

G. PACE providers shall provide enrollees with identification documents approved by DMAS. PACE plan identification documents shall give notice to others of enrollees' coverage under PACE plans.

H. PACE providers shall clearly and fully inform enrollees of their right to disenroll at will upon giving 30 days' notice.

I. PACE providers shall make available to enrollees a mechanism whereby disputes relating to enrollment and services can be considered. This mechanism shall be one that is approved by DMAS.

J. PACE providers shall fully inform enrollees of the individual provider's policies regarding accessing care generally and, in particular, accessing urgent or emergency care both within and without the catchment area.

K. PACE providers shall maintain the confidentiality of enrollees and the services provided to them.

12VAC30-50-350. PACE enrollee responsibilities.

A. Enrollees shall access services through an assigned PCP. Enrollees shall be given the opportunity to choose a PCP affiliated with the applicable PACE provider. In the event an enrollee fails to choose a PCP, one shall be assigned by the provider.

B. Enrollees shall be responsible for copayments, if any.

C. Enrollees shall raise complaints relating to PACE plan coverage and services directly with the PACE provider. The provider shall have a DMAS-approved enrollee complaint process in place at all times.

D. Enrollees shall raise complaints pertaining to Medicaid eligibility and PACE plan eligibility directly to DMAS. These complaints shall be considered under DMAS' Client Appeals regulations (12VAC30-110).

E. The PACE provider shall have a grievance process in place including procedures for filing an enrollee's grievance, documenting the grievance, responding to and resolving the grievance in a timely manner, and maintaining confidentiality of the agreement pursuant to 42 CFR 460.120.

12VAC30-50-355. PACE plan contract requirements and standards.

A. Pursuant to 42 CFR Part 460 and § 32.1-330.3 of the Code of Virginia, DMAS shall establish contract requirements and standards for PACE providers.

B. At the point of PACE plan contract agreement, DMAS shall modify 12VAC30-50-320 accordingly and submit it to CMS.

C. Any expansion of PACE programs shall be on a schedule and within an area determined solely at the discretion of DMAS through a Request for Applications (RFA) process. No organization shall begin any new PACE program without going through the RFA process as required by DMAS.

12VAC30-50-360. PACE sanctions.

A. DMAS shall apply sanctions to providers for violations of PACE contract provisions or federal or state law and regulation.

B. Permissible state sanctions shall include, but need not be limited to, the following:

1. A written warning to the provider;

2. Withholding all or part of the PACE provider's capitation payments, or retracting all or part of any reimbursement previously paid;

3. Suspension of new enrollment in the PACE plan;

4. Restriction of current enrollment in the PACE plan; and

5. Contract termination.

Part I

~~Program of All-Inclusive Care for the Elderly (PACE)~~

(Repealed.)

12VAC30-120-61. ~~Definitions.~~ (Repealed.)

~~For purposes of this part and all contracts establishing the Program of All-Inclusive Care for the Elderly (PACE) programs, as defined in 42 CFR Part 460, the following definitions shall apply:~~

~~"Adult day health care center" or "ADHC" means a DMAS-enrolled provider that offers a community based day program providing a variety of health, therapeutic, and social services designed to meet the specialized needs of those elderly and disabled individuals at risk of placement in a nursing facility. The ADHC must be licensed by the Virginia Department of Social Services as an Adult Day Care Center (ADC) as defined in 22VAC40-60-10.~~

~~"Applicant" means an individual seeking enrollment in a PACE plan.~~

~~"Capitation rate" means the negotiated Medicaid monthly per capita amount paid to a PACE provider for services provided to enrollees.~~

"Catchment area" means the designated service area for a PACE plan.

"Centers for Medicare and Medicaid Services" or "CMS" means the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

"CFR" means the Code of Federal Regulations.

"DMAS" means the Department of Medical Assistance Services.

"DSS" means the Department of Social Services.

"Direct marketing" means either (i) conducting directly or indirectly door to door, telephonic or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees;" (iv) offering financial incentives, rewards, gifts or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual or family/caregiver for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.

"Enrollee" means a Medicaid eligible individual meeting PACE enrollment criteria and receiving services from a PACE plan.

"Full disclosure" means fully informing all PACE enrollees at the time of enrollment that, pursuant to § 32.1 330.3 of the Code of Virginia, PACE plan enrollment can only be guaranteed for a 30 day period.

"Imminent risk of nursing facility placement" means that an individual will require nursing facility care within 30 days if a community based alternative care program, such as a PACE plan, is not available.

"PACE" means a Program of All-Inclusive Care for the Elderly. PACE services are designed to enhance the quality of life and autonomy for frail, older adults, maximize dignity of, and respect for, older adults, enable frail older adults to live in the community as long as medically and socially feasible, and preserve and support the older adult's family unit.

"PACE plan" means a comprehensive acute and long-term care prepaid health plan, pursuant to § 32.1 330.3 of the Code of Virginia and as defined in 42 CFR 460.6, operating on a capitated payment basis through which the PACE provider assumes full financial risk. PACE plans operate under both Medicare and Medicaid capitation.

"PACE plan contract" means a contract, pursuant to § 32.1-330.3 of the Code of Virginia, under which an entity assumes full financial risk for operation of a comprehensive acute and long-term care prepaid health plan with capitated payments for services provided to Medicaid enrollees being made by DMAS. The parties to a PACE plan contract are the entity operating the PACE plan, DMAS and CMS.

"PACE plan feasibility study" means a study performed by a research entity approved DMAS to determine a potential PACE plan provider's ability and resources or lack thereof to effectively operate a PACE plan. All study costs are the responsibility of the potential PACE provider.

"PACE protocol" means the protocol for the Program of All-Inclusive Care for the Elderly, as published by On Lok, Inc., as of April 14, 1995, or any successor protocol that may be agreed upon by the federal Secretary of Health and Human Services and On Lok, Inc.

"PACE site" means the location, which includes a primary care center, where the PACE provider both operates the PACE plan's adult day health care center and coordinates the provision of core PACE services, including the provision of primary care.

"PACE provider" means the entity contracting with the Department of Medical Assistance Services to operate a PACE plan.

"Plan of care" means the written plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety while receiving services from the provider.

"Preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screenings; (ii) assist individuals in determining what specific services individuals need; (iii) evaluate whether a service or a combination of existing community based services are available to meet the individual's needs; (iv) refer individuals to the appropriate provider for Medicaid funded nursing facility or home and community based care for those individuals who meet nursing facility level of care.

"Preadmission screening team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to § 32.1-330 of the Code of Virginia.

"Primary care provider" or "PCP" means the individual responsible for the coordination of medical care provided to an enrollee under a PACE plan.

"State Plan for Medical Assistance" or "the Plan" means the Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Virginia Uniform Assessment Instrument" or "UAI" means the standardized, multidimensional questionnaire that

~~assesses an individual's social, physical and mental health, and functional abilities.~~

12VAC30-120-62. ~~General PACE plan requirements.~~ (Repealed.)

~~A. DMAS, the state agency responsible for administering Virginia's Medicaid program, shall only enter into PACE plan contracts with approved PACE plan providers. The PACE provider must have an agreement with CMS and DMAS for the operation of a PACE program. The agreement must include:~~

~~1. Designation of the program's service area;~~

~~2. The program's commitment to meet all applicable federal, state, and local requirements;~~

~~3. The effective date and term of the agreement;~~

~~4. The description of the organizational structure;~~

~~5. Participant bill of rights;~~

~~6. Description of grievance and appeals processes;~~

~~7. Policies on eligibility, enrollment, and disenrollment;~~

~~8. Description of services available;~~

~~9. Description of quality management and performance improvement program;~~

~~10. A statement of levels of performance required on standard quality measures;~~

~~11. CMS and DMAS data requirements;~~

~~12. The Medicaid capitation rate and the methodology used to calculate the Medicare capitation rate;~~

~~13. Procedures for program termination; and~~

~~14. A statement to hold harmless CMS, the state, and PACE participants if the PACE organization does not pay for services performed by the provider in accordance with the contract.~~

~~B. A PACE plan feasibility study shall be performed before DMAS enters into any PACE plan contract. DMAS shall contract only with those entities it determines to have the ability and resources to effectively operate a PACE plan. A feasibility plan shall only be submitted in response to a Request for Applications published by DMAS.~~

~~C. PACE plans shall offer a voluntary comprehensive alternative to enrollees who would otherwise be placed in a nursing facility. PACE plan services shall be comprehensive and offered as an alternative to nursing facility admission.~~

~~D. All Medicaid enrolled PACE participants shall continue to meet the nonfinancial and financial Medicaid eligibility criteria established by federal law and these regulations. This requirement shall not apply to Medicare only or private pay PACE participants.~~

~~E. Each PACE provider shall operate a PACE site that is in continuous compliance with all state licensure requirements for that site.~~

~~F. Each PACE provider shall offer core PACE services as described in 12VAC30-120-64 B through a coordination site that is licensed as an ADHC by DSS.~~

~~G. Each PACE provider shall ensure that services are provided by health care providers and institutions that are in continuous compliance with state licensure and certification requirements.~~

~~H. Each PACE plan shall meet the requirements of §§ 32.1-330.2 and 32.1-330.3 of the Code of Virginia and 42 CFR, Part 460.~~

~~I. All PACE providers must meet the general requirements and conditions for participation pursuant to the required contracts by DMAS and CMS. All providers must sign the appropriate participation agreement. All providers must adhere to the conditions of participation outlined in the participation agreement and application to provide PACE services, DMAS regulations, policies and procedures, and CMS requirements pursuant to 42 CFR, Part 460.~~

~~J. Requests for participation as a PACE provider will be screened by DMAS to determine whether the provider applicant meets these basic requirements for participation and demonstrates the abilities to perform, at a minimum, the following activities:~~

~~1. Immediately notify DMAS, in writing, of any change in the information that the provider previously submitted to DMAS.~~

~~2. Assure freedom of choice to individuals in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services are performed.~~

~~3. Assure the individual's freedom to refuse medical care, treatment, and services.~~

~~4. Accept referrals for services only when qualified staff is available to initiate and perform such services on an ongoing basis.~~

~~5. Provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000 et seq.), which prohibits discrimination on the grounds of race, color, religion, sexual orientation or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act of 1990, as amended (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to~~

individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. Provide services and supplies to individuals of the same quality and in the same mode of delivery as is provided to the general public.

7. Use only DMAS designated forms for service documentation. The provider must not alter the DMAS forms in any manner unless approval from DMAS is obtained prior to using the altered forms.

8. Not perform any type of direct marketing activities to Medicaid individuals.

9. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided.

a. In general, such records shall be retained for at least six years from the last date of service or as provided by applicable federal and state laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years. However, records for Medicare Part D shall be maintained for 10 years in accordance with 42 CFR 423.505(d).

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review. The location, agent, or trustee shall be within the Commonwealth.

10. Furnish information on request and in the form requested to DMAS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement.

11. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to individuals of Medicaid.

12. Pursuant to 42 CFR 431.300 et seq., 12VAC30-20-90, and any other applicable federal or state law, all providers shall hold confidential and use for authorized DMAS purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits, or the data are necessary for the functioning of DMAS in conjunction with the cited laws.

13. CMS and DMAS shall be notified in writing of any change in the organizational structure of a PACE provider organization at least 14 calendar days before the change takes effect.

14. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider participation agreements and in the applicable DMAS provider manual. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies. A provider's noncompliance with DMAS policies and procedures may result in a retraction of Medicaid payment or termination of the provider agreement, or both.

15. Minimum qualifications of staff.

a. All employees must have a satisfactory work record as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of vulnerable adults and children. A criminal record check shall be conducted for the provider and each employee and made available for review by DMAS staff. Providers are responsible for complying with the Code of Virginia and state regulations regarding criminal record checks and barrier crimes as they pertain to the licensure and program requirements of their employees' particular practice areas.

b. Staff must meet any certifications, licensure, registration, etc., as required by applicable federal and state law. Staff qualifications must be documented and maintained for review by DMAS or its authorized contractors.

16. At the time of their admission to services, all providers participating in the Medicare and Medicaid programs must provide adult individuals with written information regarding each individual's right to make medical care decisions, including the right to accept or refuse medical treatment and the right to formulate advance directives.

K. Provider's conviction of a felony. The Medicaid provider agreement shall terminate upon conviction of the provider of a felony pursuant to § 32.1-325 of the Code of Virginia. A provider convicted of a felony in Virginia or in any other of the 50 states, the District of Columbia or, the U.S. territories, must, within 30 days, notify the Virginia Medicaid Program of this conviction and relinquish the provider agreement. In addition, termination of a provider participation agreement will occur as may be required for federal financial participation.

L. Ongoing quality management review. DMAS shall be responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each

provider for participation agreement renewal with DMAS to provide PACE services.

M. Reporting suspected abuse or neglect. Pursuant to §§ 63.2-1606 and 63.2-1508 through 63.2-1513 of the Code of Virginia, if a participating provider entity suspects that a child or vulnerable adult is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation shall report this immediately to DSS and to DMAS. In addition, as mandated reporters for vulnerable adults, participating providers must inform their staff that they are mandated reporters and provide education regarding how to report suspected adult abuse, neglect, or exploitation pursuant to § 63.2-1606 F of the Code of Virginia.

N. Documentation requirements. The provider must maintain all records of each individual receiving services. All documentation in the individual's record must be completely signed and dated with name of the person providing the service, title, and complete date with month, day, and year. This documentation shall contain, up to and including the last date of service, all of the following:

1. The most recently updated Virginia Uniform Assessment Instrument (UAI), all other assessments and reassessments, plans of care, supporting documentation, and documentation of any inpatient hospital admissions;

2. All correspondence and related communication with the individual, and, as appropriate, consultants, providers, DMAS, DSS, or other related parties; and

3. Documentation of the date services were rendered and the amount and type of services rendered.

12VAC30-120-63. ~~Criteria for PACE enrollment.~~ (Repealed.)

A. Eligibility shall be determined in the manner provided for in the State Plan and these regulations. To the extent these regulations differ from other provisions of the State Plan for purposes of PACE eligibility and enrollment, these regulations shall control.

B. Individuals meeting the following nonfinancial criteria shall be eligible to enroll in PACE plans approved by DMAS:

1. Individuals who are age 55 or older;

2. Individuals who require nursing facility level of care and are at imminent risk of nursing facility placement as determined by a Nursing Home Preadmission Screening Team through a Nursing Home Preadmission Screening performed using the UAI;

3. Individuals for whom PACE plan services are medically appropriate and necessary because without the services the individual is at imminent risk of nursing facility placement;

4. Individuals who reside in a PACE plan catchment area;

5. Individuals who meet other criteria specified in a PACE plan contract;

6. Individuals who participate in the Medicaid or Medicare programs as specified in § 32.1-330.3 E of the Code of Virginia; and

7. Individuals who voluntarily enroll in a PACE plan and agree to the terms and conditions of enrollment.

C. To the extent permitted by federal law and regulation, individuals meeting the following financial criteria shall be eligible to enroll in PACE plans approved by DMAS:

1. Individuals whose income is determined by DMAS under the provision of the State Plan to be equal to or less than 300% of the current Supplemental Security Income payment standard for one person; and

2. Individuals whose resources are determined by DMAS under the provisions of the State Plan to be equal to or less than the current resource allowance established in the State Plan.

D. For purposes of a financial eligibility determination, applicants shall be considered as if they are institutionalized for the purpose of applying institutional deeming rules.

E. DMAS shall not pay for services provided to an applicant by a PACE contractor if such services are provided prior to the PACE plan authorization date set by the Nursing Home Preadmission Screening team.

12VAC30-120-64. ~~PACE enrollee rights.~~ (Repealed.)

A. PACE providers contractors shall ensure that enrollees are fully informed of their rights and responsibilities in accordance with all state and federal requirements. These rights and responsibilities shall include, but not be limited to:

1. The right to be fully informed at the time of enrollment that PACE plan enrollment can only be guaranteed for a 30-day period pursuant to § 32.1-330.3 F of the Code of Virginia;

2. The right to receive PACE plan services directly from the provider or under arrangements made by the provider; and

3. The right to be fully informed in writing of any action to be taken affecting the receipt of PACE plan services.

B. PACE providers shall notify enrollees of the full scope of services available under a PACE plan, as described in 42 CFR 460.92. The services shall include, but not be limited to:

1. Medical services, including the services of a PCP and other specialists;

2. Transportation services;

3. Outpatient rehabilitation services, including physical, occupational and speech therapy services;

4. Hospital (acute care) services;

5. Nursing facility (long-term care) services;

6. Prescription drugs;

7. Home health services;

8. Laboratory services;

9. Radiology services;

10. Ambulatory surgery services;

11. Respite care services;

12. Personal care services;

13. Dental services;

14. Adult day health care services, to include social work services;

15. Interdisciplinary case management services;

16. Outpatient mental health and mental retardation services;

17. Outpatient psychological services;

18. Prosthetics; and

19. Durable medical equipment and other medical supplies.

C. Services available under a PACE plan shall not include any of the following:

1. Any service not authorized by the interdisciplinary team unless such service is an emergency service (i.e., a service provided in the event of a situation of a serious or urgent nature that endangers the health, safety, or welfare of an individual and demands immediate action);

2. In an inpatient facility, private room and private duty nursing services unless medically necessary, and nonmedical items for personal convenience such as telephones charges and radio or television rental unless specifically authorized by the interdisciplinary team as part of the participant's plan of care;

3. Cosmetic surgery except as described in agency guidance documents;

4. Any experimental medical, surgical or other health procedure; and

5. Any other service excluded under 42 CFR 460.96.

D. PACE providers shall ensure that PACE plan services are at least as accessible to enrollees as they are to other Medicaid eligible individuals residing in the applicable catchment area.

E. PACE providers shall provide enrollees with access to services authorized by the interdisciplinary team 24 hours per day every day of the year.

F. PACE providers shall provide enrollees with all information necessary to facilitate easy access to services.

G. PACE providers shall provide enrollees with identification documents approved by DMAS. PACE plan identification documents shall give notice to others of enrollees' coverage under PACE plans.

H. PACE providers shall clearly and fully inform enrollees of their right to disenroll at will upon giving 30 days' notice.

I. PACE providers shall make available to enrollees a mechanism whereby disputes relating to enrollment and services can be considered. This mechanism shall be one that is approved by DMAS.

J. PACE providers shall fully inform enrollees of the individual provider's policies regarding accessing care generally, and in particular, accessing urgent or emergency care both within and without the catchment area.

K. PACE providers shall maintain the confidentiality of enrollees and the services provided to them.

12VAC30-120-65. ~~PACE enrollee responsibilities.~~ (Repealed.)

A. Enrollees shall access services through an assigned PCP. Enrollees shall be given the opportunity to choose a PCP affiliated with the applicable PACE provider. In the event an enrollee fails to choose a PCP, one shall be assigned by the provider.

B. Enrollees shall be responsible for co-payments, if any.

C. Enrollees shall raise complaints relating to PACE plan coverage and services directly with the PACE provider. The provider shall have a DMAS approved enrollee complaint process in place at all times.

D. Enrollees shall raise complaints pertaining to Medicaid eligibility and PACE plan eligibility directly to DMAS. These complaints shall be considered under DMAS' Client Appeals regulations (12VAC30-110-10 et seq.).

E. The PACE provider shall have a grievance process in place including procedures for filing an enrollee's grievance, documenting the grievance, responding to and resolving the grievance in a timely manner, and maintaining confidentiality of the agreement pursuant to 42 CFR 460.120.

12VAC30-120-66. ~~PACE plan contract requirements and standards.~~ (Repealed.)

A. Pursuant to 42 CFR Part 460 and § 32.1 330.3 of the Code of Virginia, DMAS shall establish contract requirements and standards for PACE providers.

B. At the point of PACE plan contract agreement, DMAS shall modify 12VAC30-50-320 accordingly and submit it to CMS.

~~C. Any expansion of PACE programs shall be on a schedule and within an area determined solely at the discretion of DMAS through a Request for Applications (RFA) process. No organization shall begin any new PACE program without going through the RFA process as required by DMAS.~~

12VAC30-120-67. ~~PACE catastrophic coverage limitation.~~ (Repealed.)

~~A. DMAS shall limit contractors' liability for Medicaid covered services required by individual enrollees when the need for services arises from a catastrophic occurrence or disease.~~

~~B. If, during a single state fiscal year period (July 1 through June 30), an enrollee receives medically necessary PACE plan services necessitated by a catastrophic occurrence or disease and the cost of those services, calculated using DMAS' applicable provider payment schedules, exceeds the catastrophic coverage limitation established in the PACE plan contract for the Medicaid capitated portion of the payments, DMAS shall compensate the contractor for Medicaid covered services provided beyond the limitation amount.~~

~~C. When this provision is invoked, DMAS shall compensate the contractor for Medicaid covered services at the rates established under the applicable Medicaid provider payment schedules.~~

12VAC30-120-68. ~~PACE sanctions.~~ (Repealed.)

~~A. DMAS shall apply sanctions to providers for violations of PACE contract provisions and/or federal or state law and regulation.~~

~~B. Permissible state sanctions shall include, but need not be limited to, the following:~~

~~1. A written warning to the provider;~~

~~2. Withholding all or part of the PACE provider's capitation payments, or retracting all or part of any reimbursement previously paid;~~

~~3. Suspension of new enrollment in the PACE plan;~~

~~4. Restriction of current enrollment in the PACE plan; and~~

~~5. Contract termination.~~

VA.R. Doc. No. R09-1534; Filed December 2, 2008, 3:00 p.m.

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TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **14VAC5-323. Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values (adding 14VAC5-323-10 through 14VAC5-323-70).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: January 1, 2009.

Agency Contact: Raquel Pino-Moreno, Principal Insurance Analyst, State Corporation Commission, Bureau of Insurance, 1300 East Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

Summary:

The regulations increase the reserves required for preneed insurance policies by not allowing the 2001 Commissioners Standard Ordinary Mortality Table to be used (mandatory after January 1, 2012) and instead requiring that reserves be based on the older Commissioners 1980 Standard Ordinary Life Valuation Mortality Table. The regulations are based on the Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values Model Regulation (model), which was adopted by the National Association of Insurance Commissioners in March 2008. The higher reserves may qualify as tax reserves (tax deductible) per the Internal Revenue Code if 26 states adopt the model by January 1, 2009. There were no changes from the proposed version of the regulations.

AT RICHMOND, SEPTEMBER 9, 2008

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2008-00194

Ex parte: In the matter of
Adopting Rules Governing
Preneed Life Insurance
Minimum Standards for

Determining Reserve Liabilities
And Nonforfeiture Values

By Order to Take Notice ("Order") entered September 9, 2008, all interested persons were ordered to take notice that subsequent to November 14, 2008, the State Corporation Commission ("Commission") would consider the entry of an order adopting new rules proposed by the Bureau of Insurance ("Bureau") entitled "Rules Governing Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values" ("Rules"), set forth in Chapter 323 of Title 14 of the Virginia Administrative Code, unless on or before November 14, 2008, any person objecting to the adoption of the proposed new Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order also required all interested persons to file their comments in support of or in opposition to the proposed new Rules on or before November 14, 2008.

The Funeral Directors Life Insurance Company timely filed comments with the Clerk in support of the proposed new Rules. There were no other comments or requests for a hearing filed with the Clerk.

The Bureau does not recommend further changes to the proposed new Rules and, further, recommends that the Rules be adopted as proposed.

THE COMMISSION, having considered the comments and the Bureau's recommendation, is of the opinion that the attached proposed new Rules should be adopted.

IT IS THEREFORE ORDERED THAT:

(1) The proposed new Rules at Chapter 323 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values," which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective January 1, 2009.

(2) AN ATTESTED COPY hereof, together with a copy of the adopted Rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the adoption of the new Rules by mailing a copy of this Order, together with a clean copy of the attached Rules, to all licensed life insurers, burial societies, and fraternal benefit societies authorized by the Commission pursuant to Title 38.2 of the Code of Virginia, and certain interested parties designated by the Bureau.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the adopted Rules on the Commission's website, http://www.scc.virginia.gov/case.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

CHAPTER 323
PRENEED LIFE INSURANCE MINIMUM STANDARDS FOR DETERMINING RESERVE LIABILITIES AND NONFORFEITURE VALUES

14VAC5-323-10. Authority.

This chapter is promulgated by the commission, pursuant to § 38.2-223 of the Code of Virginia and in accordance with §§ 38.2-3130, 38.2-3206 through 38.2-3209, and 38.2-4120 of the Code of Virginia and 14VAC5-319-40, to approve, recognize, permit, and prescribe the use of the 1980 Commissioners Standard Ordinary (CSO) Life Valuation Mortality Table for use in determining the minimum standard of valuation of reserves and the minimum standard nonforfeiture values for insurers offering preneed insurance in this Commonwealth.

14VAC5-323-20. Definitions.

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

"2001 CSO Mortality Table" means that mortality table, which is included in the Proceedings of the NAIC (2nd Quarter 2002), consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

"Commission" means the State Corporation Commission.

"NAIC" means the National Association of Insurance Commissioners.

"Preneed insurance," "preneed insurance contract," or "preneed insurance policy" means a life insurance policy, or other life insurance contract which at issue, whether by assignment or otherwise, has for a purpose, the funding of a preneed funeral contract as defined in § 54.1-2800 of the Code of Virginia.

"Ultimate 1980 CSO" means the Commissioners 1980 Standard Ordinary Life Valuation Mortality Table without

any selection factors, incorporated into the 1980 NAIC amendments to the Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance models, and adopted by the NAIC in December 1983. It is a mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to recommend new mortality tables for valuation of standard individual ordinary life insurance, as set forth in Transactions, Society of Actuaries, Vol. XXXIII (1981), pp. 673 and 674.

14VAC5-323-30. Minimum valuation mortality standards.

For preneed insurance contracts, and similar policies and contracts, the minimum mortality standard for determining reserve liabilities and nonforfeiture values for both male and female insureds shall be the Ultimate 1980 CSO.

14VAC5-323-40. Minimum valuation interest rate standards.

A. The interest rates used in determining the minimum standard for valuation of preneed insurance shall be the calendar year statutory valuation interest rates as defined in §§ 38.2-3133 through 38.2-3136 of the Code of Virginia.

B. The interest rates used in determining the minimum standard for nonforfeiture values for preneed insurance shall be the calendar year statutory nonforfeiture interest rates as defined in § 38.2-3209 of the Code of Virginia.

14VAC5-323-50. Minimum valuation method standards.

A. The method used in determining the standard for the minimum valuation of reserves of preneed insurance shall be the method defined in §§ 38.2-3129 and 38.2-3130 of the Code of Virginia.

B. The method used in determining the standard for the minimum nonforfeiture values for preneed insurance shall be the method defined in § 38.2-3209 of the Code of Virginia.

14VAC5-323-60. Transition provisions.

A. For preneed insurance policies issued on or after January 1, 2009, and before January 1, 2012, the 2001 CSO Mortality Table may be used as the minimum standard for reserves and minimum standard for nonforfeiture benefits for both male and female insureds pursuant to the requirements of the rules entitled "Use of the 2001 CSO Mortality Table in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits (14VAC 5-321)."

B. If an insurer elects to use the 2001 CSO Mortality Table as a minimum standard for any preneed insurance policy issued on or after January 1, 2009, and before January 1, 2012, the insurer shall provide, as a part of the actuarial opinion memorandum submitted in support of the company's asset adequacy testing, an annual written notification to the domiciliary commissioner. The notification shall include:

1. A complete list of all preneed insurance policy forms that use the 2001 CSO as a minimum standard;

2. A certification signed by the appointed actuary stating that the reserve methodology employed by the company in determining reserves for the preneed insurance policies issued after January 1, 2009, and using the 2001 CSO as a minimum standard, develops adequate reserves (for the purposes of this certification, the preneed insurance policies using the 2001 CSO as a minimum standard cannot be aggregated with any other insurance policies.); and

3. Supporting information regarding the adequacy of reserves for preneed insurance policies issued after January 1, 2009, and using the 2001 CSO as a minimum standard for reserves.

C. Preneed insurance policies issued on or after January 1, 2012, shall use the Ultimate 1980 CSO in the calculation of minimum nonforfeiture values and minimum reserves.

14VAC5-323-70. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall not be affected thereby.

VA.R. Doc. No. R09-1348; Filed December 2, 2008, 1:53 p.m.

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TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

REGISTRAR'S NOTICE: The Safety and Health Codes Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-20. Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees (amending 16VAC25-20-10).**

Statutory Authority: §§ 40.1-22 and 40.1-51.20 of the Code of Virginia.

Effective Date: February 1, 2009.

Agency Contact: John Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Powers-Taylor

Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Summary:

The amendment clarifies that roofing, flooring and siding are the only nonfriable materials that do not become friable when installed, encapsulated or removed. The intent of the amendment is to eliminate confusion on the part of asbestos contractors who must be licensed by the Department of Professional and Occupational Regulation but who must file asbestos project permits with the Department of Labor and Industry.

16VAC25-20-10. Definitions.

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

"Activity" means from the set-up of negative air containment through the breakdown of that containment. Work within a single structure or building shall be considered as one "activity" so long as such work is not interrupted except for weekends, holidays, or delays due to inclement weather. Where containment is not required, all work within single structure or building shall be considered as one "activity."

"Asbestos" means any material containing more than 1.0% asbestos by area as determined by microscopy.

"Asbestos contractor's license" means an authorization issued by the Department of Professional and Occupational Regulation permitting a person to enter into contracts to perform an asbestos abatement project.

"Asbestos project" means an activity involving job set-up for containment, removal, encapsulation, enclosure, encasement, renovation, repair, construction or alteration of an asbestos-containing material. An asbestos project or asbestos abatement project shall not include nonfriable asbestos-containing ~~material~~ roofing, flooring and siding ~~materials which~~ material that when installed, encapsulated or removed ~~do~~ does not become friable.

"Asbestos supervisor" means any person so designated by an asbestos contractor who provides on-site supervision and direction to the workers engaged in asbestos projects.

"Building" means a combination of any materials, whether portable or fixed including part or parts and fixed equipment of them, that forms a structure for use or occupancy by persons or property.

"Construction" means all the on-site work done in building or altering structures from land clearance through completion, including excavation, erection, and the assembly and installation of components and equipment.

"Department" means the Department of Labor and Industry.

"Friable" means that the material when dry, may be crumbled, pulverized, or reduced to powder by hand pressure and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, or any other individual or entity.

"Residential buildings" means site-built homes, modular homes, condominium units, mobile homes, manufactured housing, and duplexes, or other multi-unit dwelling consisting of four units or less which are currently in use or intended for use only for residential purposes. Demolitions of any of the above structures ~~which~~ that are to be replaced by other than a residential building shall not fall within this definition.

"RFS contractor's license" means an authorization issued by the Department of Professional and Occupational Regulation permitting a person to enter into contracts to install, remove or encapsulate nonfriable asbestos-containing roofing, flooring, and siding materials.

"Site" means a specific geographically contiguous area with defined limits owned by a single entity on which asbestos removal will occur.

"Structure" means an assembly of materials, or part or parts of them, forming a construction.

VA.R. Doc. No. R09-1733; Filed December 3, 2008, 10:21 a.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: **20VAC5-312. Rules Governing Retail Access to Competitive Energy Services (amending 20VAC5-312-10, 20VAC5-312-20, 20VAC5-312-60, 20VAC5-312-80, 20VAC5-312-90; repealing 20VAC5-312-120).**

20VAC5-313. Rules Governing Exemptions to Minimum Stay Requirements and Wires Charges (amending 20VAC5-313-10, 20VAC5-313-20; repealing 20VAC5-313-30).

Statutory Authority: §§ 12.1-13 and 56-576 of the Code of Virginia.

Effective Date: January 1, 2009.

Agency Contact: David Eichenlaub, Assistant Director, Economic and Finance Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9050, FAX (804) 371-9935, or email david.eichenlaub@scc.virginia.gov.

Summary:

Revisions have been made to these rules as they relate to electric energy services necessitated by the changes in the statutory requirements for the provision of retail access to electric energy services set forth in amendments by the Virginia General Assembly to the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia), renamed the Virginia Electric Utility Regulation Act. The revisions remove references to default service, modify the initiation of the reporting requirements for companies to begin with enrollment of customers under a retail access program, modify the customer information requirement on local distribution companies, modify the minimum stay requirement for electric customers, provide for an exception to the billing and payment rules for those companies offering an approved 100% renewable electric tariff to its retail customers, and eliminate the regulation governing competitive metering from 20VAC5-312. The changes to 20VAC5-313 eliminate provisions related to wires charges.

In response to comments filed by interested parties and the staff report filed by the commission's staff, several revisions to the proposed version were made to (i) clarify how the minimum stay provisions of 20VAC5-312-80 Q will operate; (ii) reflect that consolidated billing is now permissive, not mandatory, and covered by filed utility tariffs; and (iii) add MCF, a gas usage term, to provisions previously only using the electric designations MW or kWh.

AT RICHMOND, NOVEMBER 26, 2008

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE-2008-00061

Ex Parte: In the matter of revising the rules
of the State Corporation Commission governing
Retail Access to Competitive Energy Services

ORDER REVISING REGULATIONS

The Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules"), 20 VAC 5-312-10 et seq., were adopted in 2001[1] and last revised in 2003.[2] Additionally, the Rules Governing Exemptions to the Minimum Stay Requirements and Wires Charges, set forth in 20 VA 5-313-10 et seq., were adopted in 2006 as transitory regulations promulgated to be in addition to the existing Retail Access Rules.[3]

On July 29, 2008, the Commission entered an Order For Notice of Proceeding To Consider Revisions to the Commission's Rules Governing Retail Access to Competitive Energy Services ("July 29, 2008 Order") to revise the Retail Access Rules in order to reflect statutory changes made to the Virginia Electric Utility Restructuring Act,[4] §§ 56-576 *et seq*. of the Code of Virginia ("Code") by the Virginia General Assembly regarding retail access to electric energy services within the Commonwealth.[5] The July 29, 2008 Order attached draft revisions ("Proposed Rules") prepared by the Commission Staff ("Staff"), directed that notice of the Proposed Rules be given to the public, and provided an opportunity for interested persons to file comments on, propose modifications and supplements to, and request a hearing on the Proposed Rules.

Pursuant to the July 29, 2008 Order, comments were due by September 22, 2008. The Commission received comments from Appalachian Power Company ("APCo"), Virginia Electric Cooperatives,[6]Virginia Electric and Power Company ("Virginia Power"), and Columbia Gas of Virginia, Inc. ("CGV"). None of the parties filing comments requested a hearing on the proposed revisions. However, Virginia Power requested an opportunity to file reply comments on or before October 15, 2008, in order to address any issues in the comments filed by others or in the Staff Report scheduled to be filed on October 6, 2008. On October 3, 2008, Robert A. Vanderhye filed with the Commission a request that comments he had filed in another Commission proceeding[7] be considered in this case, and that a hearing on the Proposed Rules be held by the Commission. Mr. Vanderhye requested that the hearing be scheduled after a decision has been reached in Case No. PUE-2008-00044, and another Commission proceeding,[8] asserting that the decisions reached in these cases will have a bearing on any changes to the Retail Access Rules. The Staff filed a Report on October 6, 2008, as directed by July 29, 2008 Order, summarizing the comments filed by APCo, the Virginia Electric Cooperatives, Virginia Power, and CGV, and making further revisions to the Proposed Rules, where necessary, in response to the comments filed on September 22, 2008.[9]

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the regulations attached hereto should be adopted effective January 1, 2009.

In the revisions to the Code enacted under Chapters 888 and 933 of the 2007 Virginia Acts of Assembly, the General Assembly, inter alia, moved the expiration of capped rates to December 31, 2008, and limited the ability of most consumers to purchase electric generation service from competing suppliers thereafter. Residential retail consumers will have the ability to engage in a choice of competitive generation suppliers only if the incumbent electric utility does not offer an approved tariff for electric energy provided 100 percent from renewable energy. Large customers exceeding 5 MW in demand maintain the ability to shop among competitive suppliers, and nonresidential customers may seek to aggregate load up to the 5 MW threshold in order to use a competitive supplier. Accordingly, it is necessary for the Commission to revise the Retail Access Rules effective January 1, 2009, in order to have the Commission's rules and regulations properly tailored to the new regulatory paradigm prescribed by the Virginia General Assembly.

The July 29, 2008 Order provided Proposed Rules which were developed by the Staff to incorporate changes to the Retail Access Rules necessitated by the statutory changes described above. APCo, the Virginia Electric Cooperatives, Virginia Power, and CGV provided comments on the Staff's Proposed Rules, and proposed several modifications of their own, which, as will be discussed below, are adopted or rejected by this Order.

The Virginia Electric Cooperatives and Virginia Power each proposed modifications to 20 VAC 5-312-10, the "Applicability; definitions" section of the Retail Access Rules. The Virginia Electric Cooperatives suggest stating that the regulations do not apply to a utility that offers a 100% renewable energy tariff option and has no customers meeting the load threshold.[10] We find that this modification is unnecessary. As drafted, the regulations attached hereto will operate so as to cover the various scenarios provided by the statute. As noted in the Staff Report, certain rules refer to "eligible customers" to recognize that specific regulations are not applicable to, for example, residential customers, if the Commission has approved a tariff for electric energy provided 100% from renewable energy.[11] Virginia Power suggests that certain definitions be changed to reflect that they are only applicable to natural gas customers.[12] We find that these proposed changes are unnecessary. For example, as noted in the Staff Report, while the 2007 statutory changes eliminated electric utilities' obligation to provide consolidated billing, the regulations have been revised to reflect that consolidated billing is no longer mandatory. [13] Thus, consistent with the natural gas utilities' present practice, the utilities' tariffs, as approved by the Commission, will determine billing options.

Virginia Power, CGV, and the Virginia Electric Cooperatives each proposed additional modifications to 20 VAC 5-312-20, the "General provisions" section of the Retail Access Rules. CGV suggested several technical corrections to this section, including the need for subsection N to use the gas measurement term "MCF" in addition to the electric terms MW or kWh. The Staff Report included these technical corrections in the revisions to the Proposed Rules, and we adopt them herein.

The Virginia Electric Cooperatives seek an addition to subsection F of 20 VAC 5-312-20 to reflect what they perceive as a statutory obligation under § 56-577 A 5 of the Code for competitive suppliers that provide electricity supply service to individual retail customers to provide only 100 percent renewable energy, unless such customers can shop under § 56-577 A 3 or A 4.[14] Similarly, APCo requested as part of this rulemaking that the Commission affirm that Code § 56-577 A 5 establishes that if a local distribution company offers an approved tariff for electric energy provided 100 percent from renewable energy, other competitive providers are prevented from offering all renewable energy products within that service area and may not offer a mix of 50 percent from renewable sources and 50 percent from traditional sources.[15] We find it unnecessary to restate the statute in these rules or to address the interpretation requested by the Virginia Electric Cooperatives and APCo.

Virginia Power proposed several modifications to 20 VAC 5-312-20 on the basis that this rule applied only to natural gas local distribution companies going forward. For the same reasons discussed above, we find these proposed changes unnecessary. With regard to the reporting requirements in subsections M and N of 20 VAC 5-312-20, as set forth initially by the Staff in the Proposed Rules, the reporting requirement is activated "[u]pon enrollment of a customer to receive competitive supply service." We find this sufficient to address Virginia Power's concern that the reporting requirements will have little value given the very limited access to retail choice.[16] Finally, as acknowledged in the Staff Report, 20 VAC 5-312-20 preserves the right of any electric or natural gas utility to request a waiver of any provision believed to be unwarranted or cause harm or hardship to such utility.[17]

Virginia Power and the Virginia Electric Cooperatives each proposed additional modifications to 20 VAC 5-312-60, the "Customer information" section of the Retail Access Rules. Virginia Power asserts that it would be burdensome to continually update its mass list of eligible customers every time a competitive service provider requests a list.[18] Virginia Power's proposed solution is to require electric local distribution companies to provide the mass list once annually.[19] As revised by the Staff in the initial Proposed Rules, the original regulations have been amended to require the local distribution companies to update or replace their list of eligible customers annually. This annually updated list would be provided upon request of a competitive service provider. Hence, there is no burden placed upon local distribution companies to update their list every time a competitive service provider makes a request. The Staff

Report notes that as revised, creation of the mass list is not necessary until a list is requested by a competitive service provider.[20] We find that the revisions to this section set forth in the Proposed Rules by Staff adequately address this concern raised by Virginia Power.

The Virginia Electric Cooperatives proposed to define who "eligible customers" are in greater detail. We find this proposal to be unnecessary. Whether a customer is "eligible" or not is determined by the customer's class and size, and the renewable energy offerings by its incumbent provider, as stated in the Code.

Virginia Power, APCO, and the Virginia Electric Cooperatives each expressed concern regarding the revisions to 20 VAC 5-312-80 Q, as initially drafted by the Staff, regarding "minimum stay" obligations.[21] In its Staff Report, the Staff acknowledged the potential for confusion in the revised language concerning the rules governing the minimum stay requirements and offered further clarification to those rules.[22] As adopted herein, the 12-month minimum stay requirement applies to any electric customer with an annual peak demand of 500 kW or greater. This is the same threshold that existed in this regulation prior to this proceeding. Subsection Q is further revised to account for the statutory revisions regarding 5 MW and aggregated nonresidential retail customers set out in Code § 56-577 requiring either a five-year notice or Commission permission to return to tariffed rates. The 12-month minimum stay period retained herein applies to returning 5 MW and aggregated nonresidential retail customers, as required by § 56-577 A 3 C of the Code. Likewise, retained from the current Retail Access Rules as set out in 20 VAC 5-313-20[23] is the alternative for returning customers to pay market-based rates in order to avoid the obligation of a minimum stay requirement.

Virginia Power also proposed in its comments an expansion of the minimum stay period from one year to five years for 5 MW or aggregated nonresidential retail customers.[24] This proposal is based upon the hypothetical that if several large industrial customers return to service and leave within a year, then the utility may have started on construction of a new generation facility to meet those needs. According to Virginia Power, to allow customers with substantial electric energy requirements to jump on and off the system may do harm to customers who do not leave.[25] We find nothing in the present enactments that necessitates an expansion of the minimum stay requirement from one to five years. The new provisions in § 56-577 requiring a five-year notice before a large or aggregated customer can return to the electric incumbent without Commission approval provides the electric incumbent and its non-shopping customers more protection than existed prior to these statutory changes. We therefore decline to adopt Virginia Power's proposed five-year minimum stay period.

CGV proposed to amend subsection F of 20 VAC 5-312-80 as it relates to customers currently receiving service from a competitive service provider. CGV's proposed modification would require the local distribution company to reject a provider enrollment submitted by a new shopping customer's provider unless it has received a timely cancellation from the present provider.[26] As noted in the Staff Report, we have received complaints from customers whose desire to switch to a new competitive service provider has been hampered.[27] The Staff asserts that the present provisions adequately address this issue concerning multiple enrollments, i.e., if two or more enrollments are received during the monthly enrollment period then the utility is to process the first and reject all others. However, when a new monthly enrollment period begins upon the next meter read, the customer is free to choose another competitive service provider.[28] We agree with the Staff that a customer's right to choose a new provider should not be denied because the current provider has not submitted a cancellation to the local distribution company.

Virginia Power proposed that subsection E of 20 VAC 5-312-80 be further revised to be applicable to only natural gas customers.[29] The Staff did not agree, but did note that a change was warranted, modifying the Proposed Rules, as attached to the Staff Report, to ensure that the regulation applies to only those with "eligible" customers.[30] We find that the Staff adequately addresses this concern.

CGV suggested that provisions of 20 VAC 5-312-90, the "Billing and payment" section of the Retail Access Rules, be further modified to reflect the repeal of the statutory requirement to offer consolidated billing.[31] Likewise, and consistent with its earlier approach, Virginia Power proposed to modify the regulation to have it apply to natural gas local distribution companies only.[32] The Staff agreed with CGV that the statutory obligation to provide for consolidated billing has been removed.[33] The language proposed by the Staff establishes that, consistent with the natural gas utilities' present practice, the utilities' tariff as approved by the Commission will determine billing options. We adopt the Staff's revisions to 20 VAC 5-312-90 A.

Virginia Power also proposed that a provision be added to this section which would require competitive service providers to support aggregating nonresidential retail customers to the extent necessary to comply with the petition and reporting requirements of § 56-577 A 4 of the Code.[34] We find that we need not adopt such a regulation at this time. Section 56-577 A 4 b of the Code requires the Commission to impose reasonable periodic monitoring and reporting obligations in granting a petition to aggregate load. This should be sufficient to address any reporting requirements that might be addressed in a regulation. Furthermore, as § 56-577 A 4 of the Code permits certain customers to petition "for permission to aggregate or combine their demands . . . so as to become qualified to purchase electric energy from any supplier. . . ," the statute on its face does not require the

participation of the competitive service provider in the petitioning process.

Finally, we deny Virginia Power's request for an opportunity to file reply comments, and the late-filed request for a hearing submitted by Robert A. Vanderhye,[35] as unnecessary for interested persons to comment upon, and for the Commission to consider adoption of, the revised rules herein.

Accordingly, IT IS ORDERED THAT:

(1) The current Rules Governing Retail Access to Competitive Energy Services 20 VAC 5-312-10 et seq., and the Rules Governing Exemptions to the Minimum Stay Requirements and Wires Charges, 20 VAC 5-313-10 et seq., are hereby revised and adopted as attached to this Order, effective as of January 1, 2009.

(2) A copy of this Order with a copy of the rules adopted herein shall be forwarded to the Virginia Register of Regulations for publication.

(3) The request by Virginia Power for an opportunity to file reply comments is hereby denied.

(4) The late-filed request by Robert A. Vanderhye for a hearing on the revisions to the Retail Access Rules is hereby denied.

(5) There being nothing further to come before the Commission, this case shall be removed from the Commission's docket of active proceedings and the papers filed herein placed in the file for ended causes.

Commissioner Dimitri did not participate in this matter.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Charles E. Bayless, Esquire, Appalachian Power Company, 3 James Center, Suite 702, 1051 East Cary Street, Richmond, Virginia 23219; Samuel R. Brumberg, Esquire, LeClair Ryan, 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; M. Renae Carter, Esquire, Dominion Resources Services, Law Department, 120 Tredegar Street, P.O. Box 26532, Richmond, Virginia 23261-6532; James S. Copenhaver, Esquire, Columbia Gas of Virginia, 1809 Coyote Drive, Chester, Virginia 23836; Robert A. Vanderhye, 801 Ridge Drive, McLean, Virginia, 22101; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Energy Regulation and Economics and Finance.

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[1] Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: In the matter of establishing rules for retail access, Case No. PUE-2001-00013, 2001 S.C.C. Ann. Rep. 536 (Final Order, June 19, 2001).

[2] Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter concerning the aggregation of retail electric customers under the provisions of the Virginia Electric Utility Restructuring Act, Case No. PUE-2002-00174, 2003 S.C.C. Ann. Rep. 371 (Order Adopting Revised Regulations, April 9, 2003).

[3] Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for exemptions to minimum stay requirements and wires charges, Case No. PUE-2004-00068, 2006 S.C.C. Ann. Rep. 303 (Order on Motion and Adopting Rules and Regulations, January 4, 2006).

[4] Title changed to Virginia Electric Utility Regulation Act pursuant to Chapter 883 of the 2008 Virginia Acts of Assembly.

[5] See Chapters 888 and 933 of the 2007 Virginia Acts of Assembly.

[6] Filing jointly the Virginia Electric Cooperatives are: A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenberg Electric Cooperative, Northern Neck Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative, and the Virginia, Maryland, & Delaware Association of Electric Cooperatives.

[7] Application of Virginia Electric and Power Company d/b/a Dominion Virginia Power, For approval of its Renewable Energy Tariff, Case No. PUE-2008-00044.

[8] Application of Appalachian Power Company, For approval of Renewable Power Rider, Case No. PUE-2008-00057.

[9] The Staff Report notes the filing of the requests of Mr. Vanderhye on October 2, 2008, but neither addresses the comments referenced therein or the late-filed request for a hearing.

[10] Virginia Electric Cooperatives Comments at 4, fn 6 (suggesting, "[i]f the local distribution company has an approved tariff for electric energy provided 100% from renewable energy pursuant to Va. Code § 56-577(A)(5), and no customers meeting the requirements of Va. Code § 56-577(A)(3) or (A)(4), then the provisions of this Chapter shall not apply.")

[11] Staff Report at 5.

[12] Virginia Power Comments at 5-6 (proposing changes to "Bill ready," "Consolidated billing," "Nonbilling party," and "Rate ready").

[13] Staff Report at 8.

[14] Virginia Electric Cooperatives Comments at 8.

[15] APCo Comments at 2.

[16] Virginia Power Comments at 7.

[17] Staff Report at 5.

[18] Virginia Power Comments at 7.

[19] *Id.* at 8.

[20] Staff Report at 7.

[21] Virginia Power Comments at 10; APCo Comments at 1-2; Virginia Electric Cooperatives Comments at 8-9.

[22] Staff Report at 6.

[23] "Exemption to minimum stay provisions."

[24] Virginia Power Comments at 11.

[25] *Id*.

[26] CGV Comments at 3.

[27] Staff Report at 8.

[28] *Id.* at 9.

[29] Virginia Power Comments at 8.

[30] Staff Report at 8.

[31] CGV Comments at 3-4.

[32] Virginia Power Comments at 13-14.

[33] Staff Report at 8.

[34] Virginia Power Comments at 15.

[35] Mr. Vanderhye's request for a hearing on related issues in Case Nos. PUE-2008-00044 and PUE-2008-00057 was granted. Hearings in these two cases were held on November 12, 2008.

20VAC5-312-10. Applicability; definitions.

A. These regulations are promulgated pursuant to the provisions of the Virginia Electric Utility ~~Restructuring~~ Regulation Act (§ 56-576 et seq. of the Code of Virginia) and to the provisions of retail supply choice for natural gas customers, § 56-235.8 of the Code of Virginia. The provisions in this chapter apply to suppliers of electric and natural gas services including local distribution companies and competitive service providers, and govern ~~the implementation of~~ retail access to competitive energy services, to the extent permissible by statute, in the electricity and natural gas markets, including the conduct of market participants. The provisions in this chapter shall be effective January 1, 2009, and applicable to ~~the implementation of full or phased in~~ retail access to competitive energy services in the service territory of each local distribution company.

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

"Affiliated competitive service provider" means a competitive service provider that is a separate legal entity that controls, is controlled by, or is under common control of, a local distribution company or its parent. For the purpose of this chapter, any unit or division created by a local distribution company for the purpose of acting as a competitive service provider shall be treated as an affiliated competitive service provider and shall be subject to the same provisions and regulations.

"Aggregator" means a person licensed by the State Corporation Commission that, as an agent or intermediary, (i) offers to purchase, or purchases, electricity or natural gas supply service, or both, or (ii) offers to arrange for, or arranges for, the purchase of electricity supply service or natural gas supply service, or both, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers or competitive service providers; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by a competitive service provider supplying electricity or natural gas, or both; (iii) furnishing educational, informational, or analytical services to two or more competitive service providers; (iv) ~~providing default service under § 56-585 of the Code of Virginia; (v)~~ conducting business as a competitive service provider licensed under 20VAC5-312-40; and ~~(vi)~~ (v) engaging in actions of a retail customer, acting in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electricity supply service or natural gas supply service, or both, for consumption by such retail customers.

"Billing party" means a person who renders a consolidated or separate bill directly to a retail customer for competitive energy services, or distribution services, or both.

"Bill-ready" means the consolidated billing practice in which the nonbilling party calculates each retail customer's billing charges for services provided and forwards such charges to the billing party for inclusion on the consolidated bill.

"Business day" means any calendar day or computer processing day in the Eastern United States time zone in which the general office of the applicable local distribution company is open for business with the public.

"Competitive energy service" means the retail sale of electricity supply service, natural gas supply service, or any other competitive service as provided by legislation and approved by the State Corporation Commission as part of retail access by an entity other than the local distribution company as a regulated utility. For the purpose of this chapter, competitive energy services include services provided to retail customers by aggregators.

"Competitive service provider' means a person, licensed by the State Corporation Commission, that sells or offers to sell a competitive energy service within the Commonwealth. This term includes affiliated competitive service providers, as defined above, but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates. For the purpose of this chapter, competitive service providers include aggregators.

~~"Competitive transition charge" means the wires charge, as provided by § 56-583 of the Code of Virginia, that is applicable to a retail customer that chooses to procure electricity supply service from a competitive service provider.~~

"Consolidated billing" means the rendering of a single bill to a retail customer that includes the billing charges of a competitive service provider and the billing charges of the local distribution company.

"Customer" means retail customer.

"Distribution service" means the delivery of electricity or natural gas, or both, through the distribution facilities of the local distribution company to a retail customer.

"Electricity supply service" means the generation of electricity, or when provided together, the generation of electricity and its transmission to the distribution facilities of the local distribution company on behalf of a retail customer.

"Electronic Data Interchange" (EDI) means computer-to-computer exchange of business information using common standards for high volume electronic transactions.

"Local Distribution Company" means an entity regulated by the State Corporation Commission that owns or controls the distribution facilities required for the transportation and delivery of electricity or natural gas to the retail customer.

"Minimum stay period" means the minimum period of time a customer who requests electricity supply service from the local distribution company, pursuant to ~~§ 56-582 D~~ §§ 56-577 A 3 c, 56-577 C 1, and 56-582 D of the Code of Virginia, after a period of receiving electricity supply service from a competitive service provider, is required to use such service from the local distribution company.

"Natural gas supply service" means the procurement of natural gas, or when provided together, the procurement of natural gas and its transportation to the distribution facilities of a local distribution company on behalf of a retail customer.

"Nonbilling party" means a person who provides retail customer billing information for competitive energy services or regulated service to the billing party for the purpose of consolidated billing.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any city, county, town, authority or other political subdivision of the Commonwealth.

"Price-to-compare" means the portion of the electric local distribution company's regulated rate applicable to electricity supply service ~~less the competitive transition charge rate~~ or the portion of the natural gas local distribution company's regulated rate applicable to natural gas supply service.

"Rate-ready" means the consolidated billing practice in which the nonbilling party provides rate information to the billing party to calculate and include the nonbilling party's charges on the consolidated bill.

"Residential customer" means any person receiving retail distribution service under a residential tariff of the local distribution company.

"Retail access" means the opportunity for a retail customer in the Commonwealth to purchase a competitive energy service from a licensed competitive service provider seeking to sell such services to that customer.

"Retail customer" means any person who purchases retail electricity or natural gas for his or her own consumption at one or more metering points or nonmetered points of delivery located within the Commonwealth.

"Separate billing" means the rendering of separate bills to a retail customer for the billing charges of a competitive service provider and the billing charges of the local distribution company.

"Transmission provider" means an entity regulated by the Federal Energy Regulatory Commission that owns or operates, or both, the transmission facilities required for the delivery of electricity or natural gas to the local distribution company or retail customer.

"Virginia Electronic Data Transfer Working Group" (VAEDT) means the group of representatives from electric and natural gas local distribution companies, competitive service providers, the staff of the State Corporation Commission, and the Office of Attorney General whose objective is to formulate guidelines and practices for the electronic exchange of information necessitated by retail access.

20VAC5-312-20. General provisions.

A. A request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.

B. The provisions of this chapter may be enforced by the State Corporation Commission by any means authorized under applicable law or regulation. Enforcement actions may include, without limitation, the refusal to issue any license for which application has been made, and the revocation or suspension of any license previously granted. The provisions of this chapter shall not be deemed to preclude a person aggrieved by a violation of these regulations from pursuing any civil relief that may be available under state or federal law, including, without limitation, private actions for damages or other equitable relief.

C. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action or its own

motion, may investigate and take such corrective actions as may be appropriate.

D. The State Corporation Commission maintains the right to inspect the books, papers, records and documents, and to require reports and statements, of a competitive service provider as required to verify qualifications to conduct business within the Commonwealth, to support affiliate transactions, to investigate allegations of violations of this chapter, or to resolve a complaint filed against a competitive service provider. Every competitive service provider licensed pursuant to this chapter shall establish and maintain records identifying persons or entities performing promotional or marketing activities on behalf of or in conjunction with such competitive service provider.

E. ~~Absent the designation of a default service provider as determined by the State Corporation Commission pursuant to § 56-585 of the Code of Virginia, the~~ The local distribution company shall provide, pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission, service to all customers that do not select a competitive service provider and to customers that chose a competitive service provider but whose service is terminated for any reason.

F. A competitive service provider selling electricity supply service or natural gas supply service, or both, at retail shall:

1. Procure sufficient electric generation and transmission service or sufficient natural gas supply and delivery capability, or both, to serve the requirements of its firm customers.

2. Abide by any applicable regulation or procedure of any institution charged with ensuring the reliability of the electric or natural gas systems, including the State Corporation Commission, the North American Electric Reliability ~~Council~~ Corporation, and the Federal Energy Regulatory Commission, or any successor agencies thereto.

3. Comply with any obligations that the State Corporation Commission may impose to ensure access to sufficient availability of capacity.

G. The local distribution company and a competitive service provider shall not:

1. Suggest that the services provided by the local distribution company are of any different quality when competitive energy services are purchased from a particular competitive service provider; or

2. Suggest that the competitive energy services provided by a competitive service provider are being provided by the local distribution company rather than the competitive service provider.

H. The local distribution company shall conduct its forecasting, scheduling, balancing, and settlement activities in a nondiscriminatory and reasonably transparent manner.

I. The local distribution company ~~or competitive service provider~~ shall bear the responsibility for metering as provided by legislation and implemented by the State Corporation Commission.

~~J. The local distribution company and a competitive service provider, shall coordinate their customer communication activities with the State Corporation Commission's statewide consumer education campaign.~~

~~K.~~ J. The local distribution company and a competitive service provider shall adhere to standard practices for exchanging data and information in an electronic medium as specified by the VAEDT and filed with the State Corporation Commission or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission. In the event the parties agree to initially use a means other than those specified by VAEDT or the local distribution company's tariff, then the competitive service provider shall file a plan with the State Corporation Commission's Division of Economics and Finance to implement VAEDT or tariff approved standards within 180 days of the initial retail offering.

~~L.~~ K. The local distribution company and a competitive service provider that is responsible for exchanging customer information electronically with such local distribution company shall, except as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, successfully complete EDI testing and receive certification for all EDI transactions, as outlined in the VAEDT EDI Test Plan, prior to actively enrolling customers, except as permitted by subsection K of this section.

~~M.~~ L. A competitive service provider offering billing service that requires the direct delivery of a bill to a customer and that requires the electronic exchange of data with the local distribution company shall furnish, prior to enrolling the customer, a sample bill produced from the data exchanged in the EDI certification process, or comparable electronic data exchange process, as described in subsection L of this section, or a sample bill produced similarly elsewhere, to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance.

~~N. The~~ M. Upon enrollment of a customer to receive competitive supply service, the local distribution company shall file with the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance a monthly report which shall, at a minimum, include all cancellation requests alleging a customer was enrolled without authorization. Such reports shall include: (i) the approximate date of the enrollment; (ii) the identity of the

competitive service provider involved; (iii) the name and address of the customer that cancelled such enrollment; and (iv) if readily available, a brief statement regarding the customer's explanation for the cancellation. Such reports shall be reviewed by commission staff and regarded as confidential unless and until the State Corporation Commission orders otherwise.

~~O. The~~ N. Upon enrollment of a customer to receive competitive supply service, the local distribution company shall file with the State Corporation Commission's Division of Economics and Finance a quarterly report providing a detailed breakdown of residential and nonresidential customer switching activity. Such reports shall include, for the local distribution company, the total number of customers and corresponding amount of load eligible to switch; and, for each competitive service provider, the total number of customers and corresponding amount of load served. The amount of load shall be measured in MW [, Mcf,] or dekatherm capacity of peak load contribution and in kWh [, Mcf,] or therms of associated energy. Such reports shall be reviewed by commission staff and information specific to individual competitive service providers shall be regarded as confidential unless and until the State Corporation Commission orders otherwise.

~~P.~~ O. By March 31 of each year, the provider of electricity supply service shall report to its customers and file a report with the State Corporation Commission stating to the extent feasible, fuel mix and emissions data for the prior calendar year. If such data is unavailable, the provider of electricity supply service shall file a report with the State Corporation Commission stating why it is not feasible to submit any portion of such data.

~~Q.~~ P. A competitive service provider shall file a report with the State Corporation Commission by March 31 of each year to update all information required in the original application for licensure. A $100 administrative fee payable to the State Corporation Commission shall accompany this report.

~~R.~~ Q. A competitive service provider shall inform the State Corporation Commission within 30 days of the following: (i) any change in its name, address and telephone numbers; (ii) any change in information regarding its affiliate status with the local distribution company; (iii) any changes to information provided pursuant to 20VAC5-312-40 A 13; and (iv) any changes to information provided pursuant to 20VAC5-312-40 A 15.

~~S.~~ R. If a filing with the State Corporation Commission, made pursuant to this chapter, contains information that the local distribution company or a competitive service provider claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall be maintained under seal unless the State Corporation Commission orders otherwise, except that such filings shall be immediately available to the commission staff for internal use at the commission. Filings containing confidential or redacted information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential or redacted information, including supporting material, shall be clearly marked within the filing.

20VAC5-312-60. Customer information.

A. A competitive service provider shall adequately safeguard all customer information and shall not disclose such information unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by federal and state statutes.

B. The local distribution company shall provide, upon the request of a competitive service provider, a mass list of eligible customers. A competitive service provider shall adequately safeguard all of the information included on the mass list and shall not disclose such information unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain.

1. The mass list shall include the following customer information: (i) customer name; (ii) service address; (iii) billing address; (iv) either an account number, a service delivery point, or universal identifier, as applicable; (v) meter reading date or cycle; (vi) wholesale delivery point, if applicable; (vii) rate class and subclass or rider, as applicable; (viii) load profile reference category, if not based on rate class; and (ix) up to twelve months of cumulative historic energy usage and annual peak demand information as available.

2. Prior to disclosing any information on the mass list, the local distribution company shall provide each customer the opportunity to have the information itemized in subdivision 1 of this subsection withheld, in total, from the mass list.

3. The local distribution company shall ~~make the mass list available two months prior to implementation of full or phased-in retail access and shall~~ update or replace the list ~~every six months thereafter~~ annually. Prior to each update, each customer shall be provided an opportunity to reverse the prior decision regarding the disclosure of the information included on the mass list.

4. The local distribution company shall prepare and make available the mass list by means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission.

C. A competitive service provider choosing to utilize the mass list shall use the most recent mass list made available by the local distribution company.

D. A competitive service provider shall obtain customer authorization prior to requesting any customer usage information not included on the mass list from the local distribution company. A competitive service provider shall provide evidence of such authorization, in the manner required to demonstrate authorization to enroll a customer in 20VAC5-312-80 B, upon request by the customer or the State Corporation Commission.

20VAC5-312-80. Enrollment and switching.

A. A competitive service provider may offer to enroll a customer upon: (i) receiving a license from the State Corporation Commission; (ii) receiving EDI certification as required from the VAEDT or completing other data exchange testing requirements as provided by the local distribution company's tariff approved by the State Corporation Commission, including the subsequent provision of a sample bill as required by 20VAC5-312-20 ~~M~~ L ; and (iii) completing registration with the local distribution company.

B. A competitive service provider may enroll, or modify the services provided to, a customer only after the customer has affirmatively authorized such enrollment or modification. A competitive service provider shall maintain adequate records allowing it to verify a customer's enrollment authorization. Examples of adequate records of enrollment authorization include: (i) a written contract signed by the customer; (ii) a written statement by an independent third party that witnessed or heard the customer's verbal commitments; (iii) a recording of the customer's verbal commitment; or (iv) electronic data exchange, including the Internet, provided that the competitive service provider can show that the electronic transmittal of a customer's authorization originated with the customer. Such authorization records shall contain the customer's name and address; the date the authorization was obtained; the name of the product, pricing plan, or service that is being subscribed; and acknowledgment of any switching fees, minimum contract terms or usage requirements, or cancellation fees. Such authorization records shall be retained for at least 12 months after enrollment and shall be provided within five business days upon request by the customer or the State Corporation Commission.

C. A competitive service provider shall send a written contract to a customer prior to, or contemporaneously with, sending the enrollment request to the local distribution company.

D. Upon a customer's request, a competitive service provider may re-enroll such customer at a new address under the existing contract, without acquiring new authorization records, if the competitive service provider is licensed to provide service to the customer's new address and is registered with the local distribution company.

E. The local distribution company shall advise [~~a customer~~ eligible customers] initiating new service of the customer's right and opportunity to choose a competitive service provider.

F. In the event that multiple enrollment requests are submitted regarding the same customer within the same enrollment period, the local distribution company shall process the first one submitted and reject all others for the same enrollment period.

G. Except as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, the competitive service provider shall submit an enrollment request to the local distribution company at least 15 days prior to the customer's next scheduled meter reading date for service to be effective on that meter reading date. For an enrollment request received less than 15 days prior to the customer's next scheduled meter reading date, service shall be effective on the customer's subsequent meter reading date, except as provided by subsection H of this section.

H. A competitive service provider may request, pursuant to the local distribution company's tariff, a special meter reading, in which case the enrollment may become effective on the date of the special meter reading. The local distribution company shall perform the requested special meter reading as promptly as working conditions permit.

I. Upon receipt of an enrollment request from a competitive service provider, the local distribution company shall, normally within one business day of receipt of such notice, mail notification to the customer advising of the enrollment request, the approximate date that the competitive service provider's service commences, and the caption and statement as to cancellation required by 20VAC5-312-70 C 8. The customer shall have until the close of business on the tenth day following the mailing of such notification to advise the local distribution company to cancel such enrollment without penalty.

J. In the event a competitive service provider receives a cancellation request within the cancellation period provided by 20VAC5-312-70 C 8 or 20VAC5-312-70 D, it shall notify, by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, the local distribution company of the customer's cancellation in order to terminate the enrollment process.

K. In the event the local distribution company receives notice of a cancellation request from a competitive service provider or a customer within the cancellation period provided by 20VAC5-312-70 C 8 or 20VAC5-312-70 D, the local distribution company shall terminate the enrollment process by any means specified by the VAEDT or as

otherwise provided by the local distribution company's tariff approved by the State Corporation Commission.

L. In the event a customer terminates a contract beyond the cancellation period as provided by 20VAC5-312-70 C 8 and 20VAC5-312-70 D, the competitive service provider or the local distribution company shall provide notice of termination to the other party by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission.

M. If a competitive service provider terminates an individual contract for any reason, including expiration of the contract, the competitive service provider shall provide notice of termination to the local distribution company by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission and also shall send written notification of such termination, for reasons other than nonpayment, to the customer at least 30 days prior to the date that service to the customer is scheduled to terminate. A competitive service provider shall send written notification to the customer for termination for nonpayment at least 15 days prior to the date that service to such customer is scheduled to terminate.

N. If the local distribution company is notified by a competitive service provider that the competitive service provider will terminate service to a customer, the local distribution company shall respond to the competitive service provider by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission to acknowledge (i) receipt of the competitive service provider's notice, and (ii) the date that the competitive service provider's service to the customer is scheduled to terminate. Additionally, the local distribution company shall send written notification to the customer, normally within five business days, that it was so informed and describe the customer's opportunity to select a new supplier. ~~Absent the designation of a default service provider as determined by the State Corporation Commission pursuant to § 56-585 of the Code of Virginia, the~~ The local distribution company shall inform the affected customer that if the customer does not select another competitive service provider, the local distribution company shall provide the customer's electricity supply service or natural gas supply service pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission.

O. If a competitive service provider decides to terminate service to a customer class or to abandon service within the Commonwealth, the competitive service provider shall provide at least 60 days advanced written notice to the local distribution company, to the affected customers, and to the State Corporation Commission.

P. If the local distribution company issues a final bill to a customer, the local distribution company shall notify, by any means specified by the VAEDT or as otherwise provided in the local distribution company's tariff approved by the State Corporation Commission, the customer's competitive service provider.

Q. ~~The~~ [~~If the local distribution company does not offer an approved tariff for electric energy provided 100% from renewable energy pursuant to § 56-577 A 5 of the Code of Virginia, the~~ The] local distribution company may require a 12-month minimum stay period for electricity customers with an annual peak demand of 500 kW or greater. [~~Electricity~~ If the local distribution company does not offer an approved tariff for electric energy provided 100% from renewable energy pursuant to § 56-577 A 5 of the Code of Virginia, such electricity] customers that return to ~~capped rate~~ service provided by the local distribution company as a result of a competitive service provider's abandonment of service in the Commonwealth may choose another competitive service provider at any time without the requirement to remain for the minimum stay period of 12 months. For [individual or aggregated] customers greater than 5 MW and pursuant to § 56-577 A 3 c of the Code of Virginia [~~, an~~ such] electricity [~~customer~~ customers] choosing to purchase supply service from a licensed supplier after December 31, 2008, may return to service provided by the local distribution company upon five years' written notice and at the prices, terms, and conditions of the tariffs approved by the State Corporation Commission. Alternatively, such [~~an~~] electricity [~~customer~~ customers] may seek an exemption from the State Corporation Commission to provide less than five years' notice and, if such exemption is granted, return to service provided by the local distribution company at prices based on market-based costs pursuant to § 56-577 A 3 d [~~of the Code of Virginia~~].

R. The local distribution company may, upon a proper showing with evidence acquired by actual experience, apply for approval from the State Corporation Commission to implement alternative minimum stay period requirements. If the applicant proposes to lower the applicability limit below 500 kW, such application shall include at a minimum, the detailed information prescribed by the State Corporation Commission in the text of its Final Order in Case No. PUE010296, or as may be revised in a subsequent order.

S. The local distribution company electing to implement a minimum-stay period in conformance with this chapter shall notify, in writing, applicable customers at least 30 days in advance of such implementation date and within each subsequent notification letter as required by 20VAC5-312-80 I. Electricity customers who have selected a competitive service provider prior to the local distribution company's notice of implementing a minimum-stay period will not be subject to the minimum stay period until such time as the

customer renews an existing contract or chooses a new competitive service provider.

20VAC5-312-90. Billing and payment.

A. A competitive service provider [~~shall~~ may] offer separate billing service or consolidated billing service, where either the local distribution company or the competitive service provider would be the billing party, to prospective customers pursuant to ~~§ 56-581.1 of the Code of Virginia and~~ the local distribution company's tariff approved by the State Corporation Commission. Where a competitive service provider would be the billing party, prior to an initial offering of consolidated billing service to customers within the service territory of each local distribution company, and after certification as required by 20VAC5-312-20 ~~L~~ K, the competitive service provider shall abide by the following requirements:

1. The competitive service provider shall provide written notice, at least 30 days in advance, to the local distribution company and to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance. The written notification to the Division of Energy Regulation and the Division of Economics and Finance shall include:

a. The anticipated date of the initial consolidated billing service offering in each local distribution company service territory in which the service will be offered.

b. Any changes in information provided by the competitive service provider in its original license application pursuant to 20VAC5-312-40 A that have not been reported to the State Corporation Commission pursuant to 20VAC5-312-20 ~~Q~~ P and 20VAC5-312-20 ~~R~~ Q.

c. The expected maximum market penetration for the provision of consolidated billing service to electricity customers during the following 12 months, including the estimated number of customers and associated annual consumption by customer type or load profile classification.

d. A representation that the electric competitive service provider has undertaken the necessary preliminary coordination efforts with tax officials of each potentially affected locality regarding the competitive service provider's obligation to collect and remit local consumption taxes and local utility consumer taxes.

2. The competitive service provider shall establish such financial security as the State Corporation Commission may require for such competitive service provider's estimated liability associated with the collection and remittance of state, local, and special regulatory consumption taxes and local utility consumer taxes.

B. Subject to the exemptions applicable to municipal electric utilities and utility consumer service cooperatives set forth in § 56-581.1 J of the Code of Virginia, a competitive service provider shall coordinate the provision of the customer-selected billing service with the local distribution company by any means specified by VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission.

C. Consolidated billing, except as otherwise arranged through contractual agreement between the local distribution company and a competitive service provider or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, shall:

1. Be performed under a "bill-ready" protocol.

2. Not require the billing party to purchase the accounts receivable of the nonbilling party.

3. Not require the electric local distribution company to include natural gas competitive energy service charges on a consolidated bill or the natural gas local distribution company to include electric competitive energy service charges on a consolidated bill.

4. Not require the local distribution company to exchange billing information for any customer account with more than one competitive service provider for the same billing period.

5. Comply with the local distribution company's normal billing and credit cycle requirements for distribution service.

D. In the event a competitive service provider collects security deposits or prepayments, such funds shall be held in escrow by a third party in Virginia, and the competitive service provider shall provide to the State Corporation Commission the name and address of the entity holding such deposits or prepayments.

E. A competitive service provider requiring a deposit or prepayment from a customer shall limit the amount of the deposit or prepayment to the equivalent of a customer's estimated liability for no more than three months' usage of services from the competitive service provider by that customer.

F. Customer deposits held or collected by a local distribution company shall be for only those services provided by the local distribution company. Any deposit held in excess of this amount shall be promptly credited or refunded to the customer. The local distribution company may, upon a customer's return to regulated electricity supply service or natural gas supply service, collect that portion of a customer deposit as permitted by the local distribution company's tariffs and 20VAC5-10-20.

G. Terms and conditions concerning customer disconnection for nonpayment of regulated service charges shall be set forth in each local distribution company's tariff approved by the State Corporation Commission. A customer may not be disconnected for nonpayment of unregulated service charges. If a customer receives consolidated billing service and a competitive service provider is the billing party, the local distribution company shall advise the customer directly of any pending disconnection action for nonpayment through 10 days' notice by mail, separate from the consolidated bill. Such notice shall clearly identify the amount that must be paid and the date by which such amount must be received by, and also provide instructions for direct payment to, the local distribution company to avoid disconnection.

H. The provision of consolidated billing service shall conform to the following requirements:

1. The billing party shall apply a customer's partial payment of a consolidated bill as designated by the customer, or, in the absence of a customer's designation, to charges in the following order: (i) to regulated service arrearages owed the local distribution company; (ii) to competitive energy service arrearages owed the competitive service provider; (iii) to regulated service current charges of the local distribution company; (iv) to competitive energy service current charges of the competitive service provider; and (v) to other charges.

2. Collections of state and local consumption taxes and local utility consumer taxes shall be remitted as required by law. The person responsible for collecting and remitting such taxes shall:

a. Submit simultaneously, on or before the last day of the succeeding month of collection to the State Corporation Commission's Division of Public Service Taxation, the payment of the preceding month's state and special regulatory consumption taxes and associated Electric Utility or Natural Gas Consumption Tax Monthly Report.

b. Submit simultaneously, in accordance with the Code of Virginia and local ordinance, to each local government in whose jurisdiction the taxes have been collected, the payment of local consumption taxes and local utility consumer taxes and associated tax remittance reports.

I. The local distribution company and a competitive service provider shall comply with the following minimum billing information standards applicable to all customer bills:

1. Sufficient information shall be provided or referenced on the bill so that a customer can understand and calculate the billing charges.

2. Charges for regulated services and unregulated services shall be clearly distinguished.

3. Standard terminology shall be employed and charges shall be categorized for the following key bill components, as applicable: (i) distribution service; (ii) ~~competitive transition charge; (iii)~~ electricity supply service or natural gas supply service; ~~(iv)~~ (iii) state and local consumption tax; and ~~(v)~~ (iv) local (or locality name) utility tax. The bill may provide further detail of each of these key components as appropriate.

4. Nonroutine charges and fees shall be itemized including late payment charges and deposit collections.

5. The total bill amount due and date by which payment must be received to avoid late payment charges shall be clearly identified.

6. The 24-hour toll-free telephone number of the local distribution company for service emergencies shall be clearly identified.

7. In the event a disconnection notice for nonpayment is included on a customer bill issued by the local distribution company, the notice shall appear on the first page of the bill and be emphasized in a manner that draws immediate attention to such notice. The notice shall clearly identify the amount that must be paid and the date by which such amount must be paid to avoid disconnection.

8. The following additional information shall be provided on customer bills to the extent applicable:

a. Customer name, service address, billing address, account number, rate schedule identifier, and meter identification number.

b. Billing party name, payment address, and toll-free telephone number for customer inquiries and complaints.

c. For consolidated bills, nonbilling party name and toll-free telephone number for customer inquiries and complaints and the customer's local distribution company account number.

d. Bill issue date and notice of change in rates.

e. Previous and current meter readings and dates of such meter readings or metering period days, current period energy consumption, meter reading unit conversion factor, billing-demand information, and "estimated" indicator for non-actual meter reads.

f. Previous bill amount or account balance, payments received since previous billing, balance forward, current charges, total amount due or current account balance, and payment plan information.

g. For consolidated bills, billing party and nonbilling party elements as specified in subdivision 8 f of this subsection.

J. The local distribution company shall comply with the following additional billing information standards applicable to the bills of customers that are not subject to demand-based billing charges and that purchase regulated electricity supply

service or regulated natural gas supply service from the local distribution company:

1. The local distribution company shall employ standard terminology and categorize charges for the following key billing components: (i) distribution service; (ii) electricity supply service or natural gas supply service; (iii) state and local consumption tax; and (iv) local (or locality name) utility tax. Brief explanations of distribution service and electricity supply service or natural gas supply service shall be presented on the bill. Such explanations shall convey that distribution service is a regulated service that must be purchased from the local distribution company and that electricity supply service or natural gas supply service may be purchased from the competitive market ~~but, if applicable, may result in a competitive transition charge~~;

2. The local distribution company shall provide on customer bills a customer's monthly energy consumption, numerically or graphically, for the previous 12 months; and

3. The investor-owned electric local distribution company shall provide on each bill a "price-to-compare" value, stated in cents per kilowatt-hour, representing the cost of regulated electricity supply service [~~less the competitive transition charge, if any,~~] that would be applicable if such service were purchased from a competitive service provider. The appropriate use and limitations of such "price-to-compare" value shall be stated on the bill.

K. The local distribution company shall develop and implement a program to provide "price-to-compare" information and assistance to customers. [~~The local distribution company shall provide a program plan to the State Corporation Commission's Division of Energy Regulation at least 90 days prior to the implementation of full or phased-in retail access.~~] Such a program shall ensure that customers will be provided meaningful information for evaluating competitive offers of electricity supply service or natural gas supply service. At a minimum, the program shall include a mechanism for providing, or making readily accessible, customer-specific "price-to-compare" information, including explanations of its appropriate use and limitations ~~and, if applicable, the relationship between the regulated electricity supply charge, the competitive transition charge, and the "price-to-compare.".~~

L. The billing party shall, except as otherwise arranged through contractual agreement with the nonbilling party, provide sufficient space on a consolidated bill to accommodate the local distribution company's customer account number and the nonbilling party's name and toll-free telephone number, previous bill amount or account balance, payments applied since the previous billing, balance forward, total current charges, total amount due or current account balance, six additional numeric fields to detail current charges, and 240 additional text characters.

M. If the local distribution company, as the billing party, provides consolidated billing service to a customer and continues to be the customer's billing party after the customer's service with a competitive service provider terminates, the local distribution company shall, except as otherwise arranged through contractual agreement with such competitive service provider, continue to track and bill customer account arrearages owed to such competitive service provider for two billing cycles after service has terminated. The bill shall list, at a minimum, the name, toll-free telephone number, and balance due for each former competitive service provider.

N. If the current charges of the nonbilling party are not included on the consolidated bill issued by the billing party, the bill shall note that such charges are not included.

O. If the current charges of the nonbilling party are not included on the consolidated bill issued by the billing party due to causes attributable to the nonbilling party, the charges shall be billed in the following month unless the two parties mutually agree to other arrangements.

P. If the current charges of the nonbilling party are not included on the consolidated bill issued by the billing party due to causes attributable to the billing party, the bill shall be cancelled and reissued to include such charges unless the two parties mutually agree to other arrangements.

Q. The local distribution company or a competitive service provider shall report any significant deficiency regarding the timely issuance, accuracy, or completeness of customer bills to the State Corporation Commission's Division of Energy Regulation as soon as practicable. Such reports shall detail the circumstances surrounding the deficiency and the planned corrective actions.

R. If the local distribution company has an approved tariff for electric energy provided 100% from renewable energy pursuant to § 56-577 A 5 of the Code of Virginia, the provisions of [subsections A through Q of] this section shall not be applicable. Instead, an electric distribution company and an electric competitive service provider shall only offer separate billing service where both would be the billing party for the respective services to prospective customers pursuant to the local distribution company's tariff approved by the State Corporation Commission.

20VAC5-312-120. ~~Electricity metering.~~ (Repealed.)

~~A. If the local distribution company provides interval metering as a customer's basic metering service in accordance with its applicable tariff, interval metering of that customer's load shall continue to be required if the customer purchases electricity supply service from a competitive service provider. Unless other arrangements are agreed upon between the local distribution company and the customer, the local distribution company may remove the interval meter if the customer's~~

~~load deteriorates below previously established interval metering thresholds.~~

~~B. Upon a customer's request, the local distribution company shall provide interval metering service to the customer at the net incremental cost above the basic metering service provided by the local distribution company. The local distribution company shall reply to the customer in writing within five business days of the request for interval metering service, acknowledging receipt of the request, explaining the process, and identifying the prerequisites for commencing and completing the work. Once the customer has completed the applicable prerequisites, the local distribution company shall complete the work within 45 calendar days, or as promptly as working conditions permit.~~

~~C. The local distribution company shall offer each of the following interval metering service options to customers or their authorized competitive service provider to access unedited interval data from the local distribution company's interval metering equipment and consistent with the local distribution company's communication protocol: (i) read only electronic access to the interval billing meter, (ii) receipt of a stream of data pulses proportional to energy usage, and (iii) both of the foregoing.~~

~~D. As a component of interval metering service, the local distribution company shall read interval meters at a frequency in accordance with its applicable terms and conditions and shall store interval meter data at intervals compatible with wholesale load settlement requirements. Interval meter data may be estimated on occasion as necessary. The local distribution company shall make available to customers or their authorized competitive service provider 12 months of historical edited interval data through electronic communication medium unless otherwise requested by mail, as mutually agreed.~~

~~E. The local distribution company shall respond to requests from customers or their authorized competitive service provider to evaluate special metering functionality that may not be provided normally under the local distribution company's tariff but that is determined by the local distribution company to be within the capability of its interval metering equipment. The local distribution company shall acknowledge receipt of the requests in writing within five business days, indicating that the net incremental cost, prerequisites and process for providing the special metering functionality will be submitted in writing within 30 days. Once the customer has completed the applicable prerequisites, the local distribution company shall provide the special metering functionality within 45 calendar days, or as promptly as working conditions permit.~~

~~F. The local distribution company shall install and maintain meters owned by large industrial customers and large commercial customers if the meter is determined to be consistent with the local distribution company's billing and metering systems and communication protocol. Ownership shall apply to the meter as defined by a line of demarcation specified in the local distribution company tariff approved by the State Corporation Commission.~~

~~G. Upon a customer's request to own a meter in accordance with subsection F of this section, the local distribution company shall reply to the customer in writing within 10 days of the request, acknowledging receipt of the request, explaining the process, and identifying the prerequisites for commencing and completing the work. The local distribution company shall also explain its policies with respect to replacement of defective meters. Once the customer has completed the applicable prerequisites, the local distribution company shall complete the work within 45 days, or as promptly as working conditions permit.~~

~~H. Upon the installation of a meter owned by a customer in accordance with subsections F and G of this section, the local distribution company shall continue to have full access to the meter and shall continue to perform its normal obligations including but not limited to testing, replacement, customer accounting, reading and data management. In accordance with subsection C of this section, the local distribution company shall provide customers or their authorized competitive service provider with read only electronic access to the meter.~~

20VAC5-313-10. Applicability.

A. The existing Rules Governing Retail Access to Competitive Energy Services (20VAC5-312) remain enforceable unless further qualified by the following additional rules.

B. ~~These transitory regulations are promulgated pursuant to the amended provisions of the Virginia Electric Utility Restructuring Act (§§ 56-577 E and 56-583 of the Code of Virginia).~~ This chapter applies to suppliers of electric services including investor-owned local distribution companies and competitive service providers, and are in addition to the existing rules of 20VAC5-312. The provisions in this chapter shall be applicable to the provision of generation service to the qualifying customers electing exemption to the current minimum stay provisions ~~or to payment of the current wires charges. Rules applicable to the minimum stay exemption program shall remain in force until the termination of capped rates as provided under statute or State Corporation Commission order. Rules applicable to the offering of the wires charges exemption program shall remain in force until the earlier of July 1, 2007, or the termination of any wires charges~~.

[20VAC5-313-20. Exemption to minimum stay provisions.

A. This section applies to an investor-owned electric local distribution company imposing minimum stay provisions on certain customers as applicable under 20VAC5-312-80 Q and

20VAC5-312-80 R and to competitive service providers serving such customers.

B. An investor-owned electric local distribution company shall offer any customer with an annual peak demand of 500 kW or greater that returns to the service of the local distribution company the option to accept the service ~~at~~ pursuant to the ~~established capped rates~~ prices, terms, and conditions of its tariffs approved by the State Corporation Commission and abide by the current minimum stay requirements or to accept the service at market-based costs without the obligation of a minimum stay requirement.

C. The investor-owned electric local distribution company shall provide written notice, in a clear and conspicuous manner, as approved by the staff of the State Corporation Commission to qualified customers of the options identified in subsection B of this section. In addition, the investor-owned local distribution company shall supplement such written notice by providing information on its website, as approved by the staff of the State Corporation Commission, detailing the options identified in subsection B of this section.

D. The investor-owned local distribution company's notification to the customer advising that it has received a cancellation notice from the customer's competitive service provider, as required by 20VAC5-312-80 N, shall also in a clear and conspicuous manner, as approved by the staff of the State Corporation Commission, advise the customer of the options identified in subsection B of this section.

E. The investor-owned electric local distribution company shall employ the methodology to determine its market-based costs as provided in 20VAC5-313-40 and approved by the State Corporation Commission in Case No. PUE-2004-00068 for any customer electing such option and subsequently returning to the local distribution company.

F. The investor-owned electric local distribution company shall submit a tariff containing the market-based prices determined in subsection E of this section to the State Corporation Commission for approval prior to implementing such prices.]

20VAC5-313-30. ~~Exemption to wires charges.~~ (Repealed.)

~~A. This section applies to an investor-owned electric local distribution company imposing wires charges on its customers, except those customers participating in pilot programs approved by the State Corporation Commission in Case No. PUE-2003-00118, and to competitive service providers serving such customers.~~

~~B. The investor-owned electric local distribution company shall offer large industrial customers or large commercial customers, as well as any group of customers of any rate class aggregated together, subject to the participation limits of subsection I of this section, and upon the customer's notice to participate at least 60 days in advance, the option to purchase retail electric energy from licensed competitive service providers without the obligation to pay any wires charges imposed by the utility in exchange for the customers' agreement to pay market based costs upon any subsequent return to service of the local distribution company.~~

~~C. The investor-owned electric local distribution company shall provide written notice, in a clear and conspicuous manner, as approved by the staff of the State Corporation Commission, to qualified customers of the options identified in subsection B of this section and associated risks, particularly the customer's inability to ever return to service of the local distribution company at capped rates. In addition, the investor-owned local distribution company shall supplement such written notice by providing information on its website, as approved by the staff of the State Corporation Commission, detailing the options identified in subsection B of this section.~~

~~D. The investor-owned electric local distribution company shall employ the methodology to determine its market-based costs as provided in 20VAC5-313-40 and approved by the State Corporation Commission in Case No. PUE-2004-00068 for any customer electing such option and subsequently returning to the local distribution company.~~

~~E. An aggregator electing to serve a group of electric customers and acting on behalf of each customer and electing the option offered through subsection B of this section shall do so on behalf of its total aggregated load.~~

~~F. A contract of an aggregator and a competitive service provider serving such qualified customers shall contain a clear and conspicuous caption: "Customer's Right to Exemption of Wires Charges," in bold face type of a minimum size of 10 points, disclosing any wires charges imposed by the local distribution company, including options to exempt such payment, and associated risks to exercise such options, including the inability to ever return to service of the local distribution company at capped rates.~~

~~G. The investor-owned local distribution company's notification to the customer advising of an enrollment request, as required by 20VAC5-312-80 I, for customers electing to waive the wires charges, shall in a clear and conspicuous manner, as approved by the staff of the State Corporation Commission, state that the customer will not be required to pay wires charges, but that the customer will not ever return to service of the local distribution company at capped rates.~~

~~H. The competitive service provider serving a customer that is not obligated to pay wires charges shall provide the investor-owned local distribution company 60 days notice prior to terminating service to such a customer.~~

~~I. The election to be exempt from any wires charges is available to the first 1,000 MW or 8.0% of the investor-~~

~~owned electric local distribution company's prior year Virginia adjusted peak-load.~~

~~J. Such exemption provisions are enforceable until the earlier of July 1, 2007, or the termination of any imposed wires charges, while the inability to return to capped rate service remains indefinitely upon exercising this option.~~

VA.R. Doc. No. R08-1525; Filed December 1, 2008, 10:49 a.m.

Reproposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **20VAC5-314. Regulations Governing Interconnection of Small Electrical Generators (adding 20VAC5-314-10 through 20VAC5-314-170).**

Statutory Authority: §§ 12.1-13 and 56-578 of the Code of Virginia.

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

Public Comments: Public comments may be submitted until 5 p.m. on January 15, 2009.

Agency Contact: Michael Martin, Senior Utilities Engineer, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9336, FAX (804) 371-9350, or email mike.martin@scc.virginia.gov.

Summary:

Pursuant to § 56-578 A of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56 576 et seq.) of Title 56 of the Code of Virginia (Restructuring Act), all electric energy distributors have the obligation to connect any retail customer, including those using distributed generation, located within its service territory to the distributor's facilities used for delivery of retail electric energy, subject to State Corporation Commission (commission) rules and regulations and approved tariff provisions relating to connection of service. In accordance with § 56-578 C of the Restructuring Act, the commission proposed interconnection standards, not inconsistent with nationally recognized standards, to ensure transmission and distribution safety and reliability. Based upon comments received on the proposed interconnection standards published in the Virginia Register, the commission now directs that revisions to the proposed interconnection standards be made available for comment. These interconnection standards are now republished as reproposed regulations for further comment.

The interconnection regulations establish standardized interconnection and operating requirements for the safe operation of electric generating facilities with a rated capacity of 20 MW or less connected to the distribution systems of electric utilities under the jurisdiction of the Virginia State Corporation Commission. These requirements apply to retail electric customers, independently owned generators or any other parties operating or intending to operate a distributed generation facility. The regulations establish three interconnection review paths for interconnection of customer-sited generation in Virginia - Level 1, Level 2 and Level 3. Level 1 interconnections must include a request to interconnect a certified inverter-based generating facility no larger than 500 kW. To qualify for a Level 2 interconnection request, the generating facility can be no larger than 2 MW and the proposed generator must meet certain specified codes, standards, and certification requirements. Level 3 interconnection requests apply to generating facilities larger than 2 MW but no larger than 20 MW or a generating facility that does not pass the Level 1 or Level 2 Process. The revised proposed interconnection regulations for distributed generation are intended to more clearly delineate the responsibility of each party under an interconnection agreement. The revisions also clearly identify the cost responsibility of each party while more clearly identifying what costs can be charged interconnection customers. Moreover, the revisions are intended to make the interconnection regulations more readable.

AT RICHMOND, NOVEMBER 26, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2008-00004

Ex Parte: In the matter of establishing interconnection standards for distributed electric generation

ORDER

On February 26, 2008, the State Corporation Commission ("Commission") issued an Order Establishing Proceeding in the above-captioned case to consider interconnection standards for distributed generation for the Commonwealth in accordance with § 56-578 A of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Code"). The Staff of the Commission developed proposed rules to meet the requirement of § 56-578 C of the Restructuring Act, Chapter 314, Regulations Governing Interconnection of Small Electrical Generators, and the Commission directed that notice be given to the public and invited comments on Staff's proposed rules.

Following comments filed on Staff's proposed rules,[1] the Commission granted Staff leave to file a response to the comments filed.[2]

On October 27, 2008, the Staff of the Commission filed its Motion for Leave to File ("Motion") requesting that it be granted leave to file its Staff Report, also filed on October 27, 2008, one business day out of time. The Staff Report includes revised rules in response to the comments filed.

NOW THE COMMISSION, having considered Staff's Motion, is of the opinion and finds that it should be granted. We further find that notice of Staff's revised rules, attached hereto as Appendix A, should be given to the public and that interested persons should have an opportunity to comment on Staff's revised rules (Appendix A).

Accordingly, IT IS ORDERED THAT:

(1) Staff is hereby granted its Motion and the Staff Report filed on October 27, 2008, is hereby received into the record of this case.

(2) The Commission's Division of Information Resources shall forward a copy of this Order including Appendix A to the Registrar of Regulations for publication in the Virginia Register.

(3) On or before January 15, 2009, interested persons may file an original and fifteen (15) copies of comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Comments shall refer to Case No. PUE-2008-00004 and address Staff's revised rules (Appendix A).

(4) This matter shall remain open for further order of the Commission.

Commissioner Dimitri did not participate in this matter.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: T. Borden Ellis, Senior Attorney, Legal, NiSource Corporate Services Company, 1809 Coyote Drive, Chester, Virginia 23836; Noelle J. Coates, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Horace P. Payne, Jr., Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, RS-2, Richmond, Virginia 23219; John A. Pirko, Esquire, LeClairRyan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; Charles E. Bayless, Esquire, Appalachian Power Company, P.O. Box 1986, Charleston, West Virginia 25327; Kevin Fox, Esquire, Keyes & Fox LLP, 5727 Keith Avenue, Oakland, California 94618; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Energy Regulation and Economics and Finance.

[1] The Commission granted extensions for comments to be filed on May 15, 2008, and August 28, 2008.

[2] Order issued August 28, 2008. The Staff was granted a filing extension to October 24, 2008, by Order Granting Extension to Staff issued September 24, 2008.

CHAPTER 314
REGULATIONS GOVERNING INTERCONNECTION OF SMALL ELECTRICAL GENERATORS

20VAC5-314-10. Applicability and scope.

These regulations are promulgated pursuant to § 56-578 of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia). They establish standardized interconnection and operating requirements for the safe operation of electric generating facilities with a rated capacity of 20 megawatts (MW) or less connected to [~~distribution companies'~~ electric utility] distribution [(and in certain cases transmission)] systems in Virginia. These [~~requirements~~ regulations] apply to retail electric customers, independently owned generators [~~or~~ and] any other parties operating [,] or intending to operate [,] a distributed generation facility [in parallel with a utility's system and to the utility]. [~~Interconnections~~ These regulations do not apply to customer generators operating pursuant to the commission's Regulations Governing Net Energy Metering (20VAC5-315) or those] that fall under the jurisdiction of the Federal Energy Regulatory Commission [~~are not subject to these regulations~~].

[If the utility has turned over control of its transmission system to a Regional Transmission Entity (RTE), and if the small generator interconnection process identifies upgrades to the transmission system as necessary to interconnect the small generating facility, then the utility will coordinate with the RTE, and the procedures herein will be adjusted as necessary to satisfy the RTE's requirements with respect to such upgrades.]

There are three [~~interconnection~~] review paths for [the] interconnection of [~~customer-sited~~] generation in Virginia [having an output of not more than 20 MW]:

Level 1 - A request to interconnect a [~~certified inverter-based~~] small generating facility [(SGF)] no larger than 500 kilowatts (kW) shall be evaluated under the Level 1 process.

Level 2 - A request to interconnect a certified [~~small generating facility~~ SGF no] larger than [~~500 kW but no larger than~~] 2 MW [and not qualifying for the Level 1 process] shall be evaluated under the Level 2 process.

Level 3 - A request to interconnect [~~a small generating facility larger than 2 MW but~~ an SGF] no larger than 20 MW [~~or a small generating facility that does not pass~~ and not qualifying for] the Level 1 [process] or Level 2 process, shall be evaluated under the Level 3 process.

[An SGF proposed to be interconnected to a distribution feeder may be limited to a capacity substantially less than 20 MW, depending upon the characteristics of that feeder and the potential for upgrading it, as well as the nature of the loads and other generation on the feeder relative to the proposed point of interconnection.]

The utility shall designate an employee or office from which [the interconnection customer ("IC") may informally request] information [~~on~~ concerning] the application process [~~can be obtained through informal requests from the interconnection customer presenting a proposed project for a specific site~~]. The name, telephone number, and email address of such contact employee or office shall be made available on the utility's Internet web site. Electric system information [~~for specific locations, feeders, or small areas~~ relevant to the location of the proposed SGF] shall be provided to the [~~interconnection customer~~ IC] upon request and may include [~~relevant system studies,~~] interconnection studies [~~,~~] and [any] other [relevant] materials [~~useful to an understanding of an interconnection at a particular point on the utility's system~~], to the extent such provision does not violate confidentiality provisions of prior agreements or [release] critical infrastructure [~~requirements~~ information]. The utility shall comply with reasonable requests for such information unless the information is proprietary or confidential and cannot be provided pursuant to a confidentiality agreement.

The utility shall make reasonable efforts to meet all time frames provided in these [~~procedures~~ regulations] unless the utility and the [~~interconnection customer~~ IC] agree to a different schedule. If the utility cannot meet a deadline provided herein, it shall notify the [~~interconnection customer~~ IC], explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable interconnection procedure in the process.

20VAC5-314-20. Definitions.

The following terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Affected system" means an electric [utility] system other than [that of] the [~~utility's distribution system~~ utility] that may be affected by the proposed interconnection.

["Affected system operator" means an entity that operates an affected system or, if the affected system is under the operational control of an independent system operator or a regional transmission entity, such independent entity.

"Applicable laws and regulations" means all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any government authority.

"Attachment facilities" means the facilities and equipment owned, operated, and maintained by the utility that are built new in order to physically connect the customer's interconnection facilities to the utility system. Attachment facilities shall not include distribution upgrades or previously existing distribution and transmission facilities.]

"Business day" means Monday through Friday, excluding federal holidays.

["Certified" has the meaning ascribed to it in Schedule 2 of this chapter.

"Customer's interconnection facilities" means all of the facilities and equipment owned, operated and maintained by the interconnection customer, between the small generating facility and the point of interconnection necessary to physically and electrically interconnect the small generating facility to the utility system.]

"Commission" means the Virginia State Corporation Commission.

[~~"Distribution company" means the utility that owns and/or operates the distribution system located in Virginia to which the small generation facility proposes to interconnect its small generating facility.~~]

["Default" means the failure of a breaching party to cure its breach under the small generator interconnection agreement.]

"Distribution system" means [~~a~~ the] utility's facilities and equipment generally delivering electricity to ultimate customers from substations supplied by higher voltages (usually at transmission level). For purposes of these [~~interconnection rules~~ regulations], all portions of the [~~distribution company's~~ utility's] transmission system regulated by the commission for which interconnections are not within Federal Energy Regulatory Commission (FERC) jurisdiction are considered [also] to be [~~part of~~ subject to] these interconnection [~~rules~~ regulations].

"Distribution upgrades" means the additions, modifications, and upgrades to the utility's distribution system at or beyond the point of interconnection [~~to facilitate~~ necessary to abate problems on the utility's distribution system caused by the] interconnection of the small generating facility [~~and to render the service necessary to effect the interconnection customer's operation of on site generation~~]. Distribution upgrades do not include [customer's] interconnection facilities [or attachment facilities].

"Energy service provider" means any entity supplying electric energy [service] to the [~~producer, either as tariffed, competitive, or default service pursuant to § 56-585 of the Code of Virginia~~ interconnection customer].

["Facilities study" has the meaning ascribed to it in 20VAC5-314-70 E.

"Feasibility study" has the meaning ascribed to it in 20VAC5-314-70 C.

"FERC" means the Federal Energy Regulatory Commission.

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

"Governmental authority" means any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided that such term does not include the interconnection customer, the utility or a utility affiliate.]

"Interconnection customer" or "IC" means any entity [~~, including the utility, any affiliates or subsidiaries of either,~~] proposing to interconnect a new small generating facility with the [~~utility's~~ utility] system [~~under this chapter~~] .

[~~"Interconnection facilities" means the utility's interconnection facilities and the interconnection customer's interconnection facilities. Collectively, interconnection facilities include all facilities and equipment between the small generating facility and the point of interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the small generating facility to the utility's distribution system. Interconnection facilities are sole use facilities and shall not include distribution upgrades.~~]

"Interconnection request" means the [~~interconnection customer's~~ IC's] request, in accordance with the tariff, to interconnect a new small generating facility, or to increase the capacity of, or make a material modification to the operating characteristics of, an existing small generating facility that is interconnected with the [~~utility's~~ utility] system.

"Interconnection [~~study~~ studies] " means the [~~study that is undertaken~~ studies conducted] by the [~~company~~ utility], or a [~~mutually agreed upon~~] third party agreed to by the [~~company~~ utility] and the [~~producer~~ interconnection customer], in order to determine the interaction of the small generating facility [~~and~~ with] the [~~distribution~~ utility] system [~~,~~] and [the affected systems in order] to specify any [~~modification~~ modifications] to the small generating facility or the [~~distribution system needed~~ electric systems studied] to ensure safe and reliable operation of the small generating facility in parallel with the [~~distribution~~ utility] system.

["Material modification" means a modification that has a material impact on the cost or timing of any interconnection request with a later queue priority date.

"Operating requirements" means any operating and technical requirements that may be applicable due to regional transmission entity, independent system operator, control area, or the utility's requirements, including those set forth in the Small Generator Interconnection Agreement.]

"Party" or "parties" means the utility, interconnection customer, or [~~any combination thereof~~ both].

"Point of interconnection" means the point where the [customer's] interconnection facilities connect [~~with~~ to] the [~~utility's~~ utility] system.

[~~"Producer" means a person operating a small generating facility interconnected to the distribution system of a utility for the purpose of parallel operation.~~

"Regional Transmission Entity" or "RTE" means an entity having the management and control of a utility's transmission system as further set forth in § 56-579 of the Code of Virginia.]

"Small generating facility" [or "generator" or "SGF"] means the interconnection customer's [~~device~~ equipment] for the production of electricity identified in the interconnection request [~~, but shall not include the interconnection facilities not owned by the interconnection customer~~].

[~~"Study process" means the procedure for evaluating an interconnection request that includes the Level 3 scoping meeting, feasibility study, system impact study, and facilities study.~~

"Small Generator Interconnection Agreement" or "SGIA" means the agreement between the utility and the interconnection customer as set forth in Schedule 6 of 20VAC5-314-170.

"Supplemental review" has the meaning ascribed to it in 20VAC5-314-60 G.]

"System" [or "utility system"] means the [distribution and transmission] facilities owned, controlled, or operated by the utility that are used to [~~provide electric service under the tariff~~ deliver electricity].

["System impact study" has the meaning ascribed to in 20VAC5-314-70 E.]

"Tariff" means the rates, terms and conditions filed by the utility with the commission for the purpose of providing commission-regulated electric service to retail customers.

["Transmission system" means the utility's facilities and equipment delivering electric energy to the distribution system, such facilities being operated at voltages above the utility's typical distribution system voltages.]

"Utility" means the public utility company subject to regulation by the commission pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia with regard to rates and/or service quality [to which the interconnection customer proposes to interconnect a small generating facility].

20VAC5-314-30. Siting of distributed generation facilities.

Prior to installing a small generating facility, the [~~IC~~ interconnection customer] must ensure compliance with local, state and federal laws and regulations, including [~~siting. If the producer has satisfied the requirements of this chapter and has submitted a copy of his interconnection notification form to the commission's Division of Energy Regulation, the statutory requirements of § 56-580 D~~ all applicable easements and permits, and §§ 56-265.2 and 56-580] of the Code of Virginia [~~shall be deemed to have been met~~, as applicable].

20VAC5-314-40. Level 1 interconnection process.

[A.] The Level 1 interconnection [~~path~~ process] is available to any [~~IC~~ interconnection customer] proposing to interconnect a small generating facility with the [~~utility's distribution~~ utility] system if the [~~small generating facility~~ SGF] is no larger than 500 kW. [~~In order to interconnect under this path, the small generating facility shall complete the streamlined Interconnection Request Form contained in 20VAC5-314-170 as Schedule 1. The utility shall follow the same time line established by the commission in 20VAC5-315-30 of the Net Metering Regulations.~~

B. An IC may begin operation of a small generating facility when:

1. The IC has completed the Level 1 Interconnection Request Form (Schedule 1 in 20VAC5-314-170) and submitted it to the utility with the required $100 processing fee attached. The utility shall submit a copy of the Interconnection Notification Form to the commission's Division of Energy Regulation. The utility may supply a commission-approved Interconnection Request Form similar to Schedule 1;

2. If required by the utility's tariff, the IC has installed a lockable, utility-accessible, load breaking manual disconnect switch;

3. A licensed electrician has certified, by signing the Interconnection Request Form, that any required manual disconnect switch has been installed properly and that the small generating facility has been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code;

4. The vendor of the SGF has certified on the Interconnection Request Form that the SGF equipment is in compliance with the requirements established by Underwriters Laboratories or other national testing laboratories in accordance with IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems;

5. In the case of a static inverter-connected SGF with an alternating current capacity in excess of 10 kilowatts, the IC has had the inverter settings inspected by the utility. The utility may not impose a charge for the inspection;

6. In the case of a nonstatic inverter-connected SGF, the IC has interconnected according to the utility's interconnection guidelines, and the utility has inspected all protective equipment settings. The utility may not impose a charge for such inspection.

7. In the case of an SGF having an alternating current capacity greater than 25 kilowatts, the following requirements shall be met before interconnection may occur:

a. Distribution facilities and customer impact limitations. An SGF shall not be permitted to interconnect to distribution facilities if the interconnection would reasonably lead to damage to any of the utility's facilities or would reasonably lead to voltage regulation or power quality problems at other customer revenue meters due to the incremental effect of the SGF on the performance of the system, unless the IC reimburses the utility for its cost to modify any facilities needed to accommodate the interconnection.

b. Secondary, service, and service entrance limitations. The capacity of the SGF shall be less than the capacity of the utility-owned secondary, service, and service entrance cable connected to the point of interconnection, unless the IC reimburses the utility for its cost to modify any facilities needed to accommodate the interconnection.

c. Transformer loading limitations. The SGF shall not have the ability to overload the utility's distribution transformer, or any distribution transformer winding, beyond manufacturer or nameplate ratings, unless the IC reimburses the utility for its cost to modify any facilities needed to accommodate the interconnection.

d. Integration with utility's grounding. The grounding scheme of the SGF shall comply with the IEEE 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, and shall be consistent with the grounding scheme used by the utility. If requested by an IC, the utility shall assist the IC in selecting a grounding scheme that coordinates with its distribution system.

e. Balance limitation. The SGF shall not create a voltage imbalance of more than 3.0% at any other customer's revenue meter if the utility distribution transformer, with the secondary connected to the point of interconnection, is a three-phase transformer, unless the IC reimburses the utility for its cost to modify any facilities needed to accommodate the interconnection.

C. Neither the utility nor the energy service provider shall impose any charges upon an IC for any interconnection requirements specified by this chapter, except as may be incurred in providing off-site metering.

D. The IC shall immediately notify the utility of any changes in the ownership of, operational responsibility for, or contact information for the SGF.

E. The utility shall not be required to maintain an interconnection with an SGF if the SGF or associated equipment is found to be out of compliance with the codes, standards and certifications applicable to the SGF.]

20VAC5-314-50. Levels [~~1~~ 2] and [~~2~~ 3] interconnection request general requirements.

A. The interconnection customer shall submit [~~it's~~ a completed Levels 2 and 3] Interconnection Request Form [~~contained in~~ (Schedule 4 of] 20VAC5-314-170 [~~(Schedule 4~~]) to the utility, with the processing fee or deposit specified in the Interconnection Request Form. [~~The utility shall provide a copy of the Interconnection Request Form to the commission's Division of Energy Regulation.~~] The Interconnection Request Form shall be date- and time-stamped upon receipt by the utility [~~, which~~. The date- and time-stamp of a completed Interconnection Request Form] shall be used as the qualifying date- and time-stamp for the purposes of any timetable in these procedures. The interconnection customer shall be notified of receipt by the utility within three business days of receiving the interconnection request, which notification may be [~~to an~~ by US mail,] email address or fax number provided by the IC.

The utility shall notify the interconnection customer within 10 business days of the receipt of the Interconnection Request Form as to whether the Interconnection Request Form is complete or incomplete. If the Interconnection Request Form is incomplete, the utility shall [~~provide, along with the notice that the Interconnection Request Form is incomplete,~~ so notify the IC, including] a written list detailing all information that must be provided to complete the Interconnection Request Form.

The interconnection customer [~~will~~ shall] have 10 business days after receipt of the notice [of incomplete information] to submit the listed information or to request an extension of time to provide such information. If the [~~interconnection customer~~ IC] does not provide the listed information or a request for an extension of time within the deadline, the Interconnection Request Form will be deemed withdrawn. [~~An Interconnection Request Form will be deemed complete upon submission of the listed information to the utility.~~

The utility shall provide a copy of the final completed date- and time-stamped Interconnection Request Form to the commission's Division of Energy Regulation.]

B. Any [material] modification to machine data or equipment configuration or to the interconnection site of the small generating facility as specified in the Interconnection Request Form but not agreed to in writing by the utility and the [~~interconnection customer~~ IC] may be deemed a withdrawal of the Interconnection Request Form and may require submission of a new Interconnection Request Form, unless proper notification of each party by the other and a reasonable time to cure the problems created by the changes are undertaken.

C. Site control documentation must be submitted with the [~~interconnection request~~ Interconnection Request Form]. [Any information appearing in public records may not be labeled Confidential. (Confidential information is discussed in 20VAC5-314-110.)] Site control may be demonstrated through:

1. Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the small generating facility;

2. An option to purchase or acquire a leasehold site for such purpose;

3. An exclusivity or other business relationship between the interconnection customer and the entity having the right to sell, lease, or grant the [~~interconnection customer~~ IC] the right to possess or occupy a site for such purpose.

D. The utility shall place interconnection requests [~~in~~ into] a first come, first served [~~order per~~ queue that is based on the interconnection's distribution] feeder and [~~per~~ distribution] substation [. The queue position shall be] based upon the date- and time-stamp of the [completed] Interconnection Request Form. The [~~order of each Interconnection Request Form~~ queue position of an interconnection request] will be used to determine the cost responsibility for the [necessary] upgrades [~~necessary to accommodate the interconnection~~]. At the utility's option, interconnection requests may be studied serially or in clusters for the purpose of the system impact study.

[E. The utility shall not be required to maintain an interconnection with an SGF if the SGF or associated equipment is found to be out of compliance with the codes, standards and certification applicable to the SGF.]

20VAC5-314-60. Level 2 interconnection process.

A. The Level 2 interconnection process is available to an interconnection customer proposing to interconnect a small generating facility with the [~~utility's distribution~~ utility]

system if the [~~small generating facility~~ SGF] is no larger than 2 MW and [~~if the interconnection customer's proposed small generating facility~~ does not qualify for the Level 1 process, and] meets the codes, standards, and certification requirements of Schedules 2 and 3 in 20VAC5-314-170.

B. Within 15 business days after the utility notifies the [~~interconnection customer~~ IC] it has received a complete [~~interconnection request~~ Interconnection Request Form], the utility shall perform an initial review using the screens set forth below and shall notify the [~~interconnection customer~~ IC] of the results including copies of the analysis and data underlying the utility's determinations under the screens.

[~~1. The proposed small generating facility's point of interconnection must be on a portion of the utility's distribution system that is subject to the tariff.~~]

[C. Interconnection to radial circuits.]

[~~2.~~ 1.] For interconnection of a [~~proposed~~] small generating facility to a radial distribution circuit, the aggregated generation, including the proposed small generating facility, on the circuit shall not exceed 15% of the line section's annual peak load as most recently measured at the substation or calculated for the line [~~segment~~ section]. A line section is that portion of a [~~utility's electric system~~ distribution circuit] connected to a customer [that is] bounded by automatic sectionalizing devices or the end of the [~~distribution line~~ circuit].

[~~3.~~ 2.] The [~~proposed small generating facility~~ SGF], in aggregation with other generation on the distribution circuit, shall not contribute more than 10% to the [~~distribution~~] circuit's maximum fault current at the point on the distribution [~~feeder~~ feeder's (primary)] voltage [~~(primary)~~] level [that is] nearest the [~~proposed~~] point of [~~change of ownership~~ interconnection].

[~~4.~~ 3.] The [~~proposed small generating facility~~ SGF], in aggregate with other generation on the distribution circuit, shall not cause any distribution protective devices and equipment (including, but not limited to, substation breakers, [~~fuse~~ fused] cutouts, and line reclosers), or interconnection customer equipment on the system to exceed 87.5% of the short circuit interrupting capability; nor shall the interconnection be [~~proposed for~~ permitted on] a circuit [~~that already exceeds~~ where] 87.5% of the short circuit interrupting capability [is already exceeded].

[~~5. Using~~ 4. For interconnections to the distribution primary voltage, use] the table below, [to] determine the [acceptable] type of interconnection to a primary distribution [~~line~~ circuit]. This screen includes a review of the type of electrical service provided to the [~~interconnection customer~~ IC], including line configuration and the transformer connection [,] to limit the potential for creating over-voltages on the utility's [~~electric power~~ distribution] system due to a loss of ground during the operating time of any anti-islanding function.

Primary Distribution Line Type	Type of Interconnection to Primary Distribution Line	Result/Criteria
Three-phase, three wire	Three-phase [,] or single phase, phase-to-phase	Pass screen
Three-phase, four wire	Effectively-grounded three phase [,] or single-phase, line-to-neutral	Pass screen

[~~6.~~ 5.] If the [~~proposed~~] small generating facility is to be interconnected [~~on~~ to a] single-phase shared secondary, the aggregate generation capacity on the shared secondary, including the proposed [~~small generating facility~~ SGF], shall not exceed 20 kW.

[~~7.~~ 6.] If the [~~proposed small generating facility~~ SGF] is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than 20% of the nameplate rating of the service transformer.

[~~8.~~ 7.] The [~~small generating facility~~ SGF], in aggregate with [~~other~~] generation interconnected to the transmission side of [~~a~~ the] substation transformer [~~feeding~~ that feeds] the [distribution] circuit where the [~~small generating facility~~ SGF] proposes to interconnect [,] shall not exceed 10 MW in an area where there are known, or posted, transient stability limitations to generating units located in the general electrical vicinity (e.g., three or four transmission busses from the point of interconnection).

[~~9.~~ 8.] No construction of facilities by the utility on its own system shall be required to accommodate the [~~small generating facility~~ SGF, except minor modifications].

[~~C.~~ D.] Interconnections to [~~distribution systems~~ secondary voltage networks (120 volts to 480 volts)].

1. For interconnection of a [~~proposed~~] small generating facility to the load side of spot network protectors serving more than a single customer, the [~~proposed small generating facility~~ SGF] must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, shall not exceed the smaller of 5.0% of a spot network's maximum load or 300 kW. For spot networks serving a single customer, the [~~small generating facility~~ SGF] must use [an] inverter-based equipment package and either meet the requirements above [,] or [~~shall~~] use a protection scheme [,] or operate the

generator so as not to exceed on-site load or otherwise prevent nuisance operation of the spot network protectors.

2. For interconnection of [~~a proposed small generating facility~~ an SGF] to the load side of area network protectors, the [~~proposed small generating facility~~ SGF] must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, shall not exceed the smaller of 10% of an area network's minimum load [,] or 500 kW.

3. [~~Notwithstanding subdivision 1 or 2 of this subsection, each utility may incorporate into its interconnection standards any change in interconnection guidelines related to networks pursuant to standards developed under IEEE 1547 for interconnections to networks.~~] To the extent [~~the~~ any] new IEEE standards conflict with this chapter, [in particular IEEE 1547,] the new standards shall apply. In addition, [~~and with the consent of the~~] utility [~~, a small generating facility may be interconnected~~ consent shall not be unreasonably withheld from an SGF interconnecting] to a spot or area network provided the [~~facility~~ SGF] utilizes a protection scheme that will prevent any power export from the [~~customer's~~ IC's] site including inadvertent export under fault conditions [~~or~~, and] otherwise prevent nuisance operation of the network protectors.

[~~D.~~ E.] If the [~~proposed~~] interconnection passes the screens, the interconnection request shall be approved and the utility will provide the interconnection customer an executable interconnection agreement within [~~10~~ five] business days after the determination.

[~~E.~~ F.] If the [~~proposed~~] interconnection fails any screens, but the utility determines that the small generating facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards, the utility shall provide the [~~interconnection customer~~ IC] an executable interconnection agreement within five business days after the determination.

[~~F.~~ G.] If the [~~proposed~~] interconnection fails [~~the~~ any] screens, but the utility does not or cannot determine from the initial review that the [~~small generating facility~~ SGF] may nevertheless be interconnected consistent with safety, reliability, and power quality standards [,] unless the [~~interconnection customer~~ IC] is willing to consider minor modifications or further study, the utility shall provide the [~~interconnection customer~~ IC] with the opportunity to attend a customer options meeting.

[~~G.~~ H.] If the utility determines the [~~Interconnection Request Form~~ interconnection] cannot be approved without minor modifications at minimal cost; a supplemental study or other additional studies or actions; or at significant cost to address safety, reliability, or power quality problems, [~~within the five business day period after the determination,~~] the utility shall notify the [~~interconnection customer~~ IC] and provide copies of the data and analyses underlying its conclusion [within five business days after determination]. Within 10 business days of the [~~utility's~~] determination, the utility shall offer to convene a customer options meeting [~~with the utility~~] to review possible [~~interconnection customer~~ IC] facility modifications [,] or the screen analysis and related results, to determine what further steps are needed to permit the [~~small generating facility~~ SGF] to be connected safely and reliably. At the time of notification of the utility's determination, or at the customer options meeting, the utility shall:

1. Offer to perform facility modifications or minor modifications to the utility's electric system (e.g., changing meters, fuses, relay settings) and provide [~~a nonbinding good faith~~ an] estimate of the [~~limited~~] cost to make such modifications to the utility's electric system;

2. Offer to perform a supplemental review if the utility concludes that the supplemental review might determine that the [~~small generating facility~~ SGF] could continue to qualify for interconnection pursuant to the [~~fast track~~ Level 2] process, and provide [~~a nonbinding good faith~~ an] estimate of the costs and time of such review; or

3. [~~Obtain the interconnection customer's agreement~~ Offer] to continue evaluating the interconnection request [, but] under the Level 3 [~~study~~ interconnection] process.

[~~H.~~ I.] Supplemental review.

If [~~the interconnection customer agrees to~~] a supplemental review [~~,~~ is offered to] the interconnection customer [~~shall agree in writing within 15 business days of the offer and submit a deposit for the estimated costs provided in subdivision G 2 of this section~~ and the IC agrees to the supplemental review, the utility shall, within 10 business days of the request, provide to the IC an appropriate supplemental review agreement. To maintain its position in the utility's interconnection queue, the IC must execute the supplemental review agreement and return it to the utility, along with a deposit for the estimated cost of the supplemental review, within 15 business days after receipt of the agreement. If the IC fails to return the executed supplemental review agreement along with the deposit within 15 business days after receipt, the interconnection request shall be deemed withdrawn and shall lose its place in the utility's interconnection queue].

The [~~interconnection customer~~ IC] shall be responsible for the utility's actual costs [~~for~~ of] conducting the supplemental review. The [~~interconnection customer~~ IC] shall pay any review costs that exceed the deposit within [~~20~~ 30] business days of receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced costs, the utility will return such excess within [~~20~~ 30] business days of the invoice without interest.

Within 10 business days following receipt of the [supplemental review agreement and] deposit [~~for a~~

~~supplemental review~~], the utility will determine if the [~~small generating facility~~ SGF] can be interconnected safely and reliably.

1. If so, [and if the supplemental review reveals that no modification are required to the customer's interconnection facilities, or to the system, or to an affected system,] the utility shall forward an executable interconnection agreement to the interconnection customer within five business days [after the determination].

2. If so, and [~~interconnection customer facility~~ the customer's interconnection facilities] modifications are required to allow the [~~small generating facility~~ SGF] to be interconnected consistent with safety, reliability, and power quality standards under these procedures, the utility shall forward an executable interconnection agreement to the [~~interconnection customer~~ IC] within five business days after confirmation that the [~~interconnection customer~~ IC] has agreed to make the necessary changes at the [~~interconnection customer's~~ IC's] cost.

3. If so, and minor modifications to the utility's electric system are required to allow the [~~small generating facility~~ SGF] to be interconnected consistent with safety, reliability, and power quality standards under the Level 2 process, the utility shall forward an executable interconnection agreement to the [~~interconnection customer~~ IC] within 10 business days [after the determination] that requires the [~~interconnection customer~~ IC] to pay the costs of such system modifications prior to interconnection.

4. If not, the interconnection request will [~~continue to~~] be [~~evaluated under~~ elevated to] the Level 3 [~~study~~ interconnection] process.

20VAC5-314-70. Level 3 interconnection process.

A. The Level 3 interconnection process shall be used by an [~~IC~~ interconnection customer] proposing to interconnect a small generating facility with the [~~utility's distribution~~ utility] system if the [~~small generating facility~~ SGF] is [~~(i) larger than 2 MW but~~] no larger than 20 MW [~~, (ii) not certified, or (iii) certified but did~~ and does] not pass [or qualify for] the Level 1 or Level 2 interconnection [~~process~~ processes]. [~~A study process consisting of~~ As needed, a] scoping [meeting], feasibility [study], system impact [study], and facilities [study] shall precede the preparation of [~~an interconnection agreement~~ a Small Generator Interconnection Agreement (Schedule 6 of 20VAC5-314-170)]. [~~Feasibility studies, scoping studies, and facility~~ Any of the] studies may be combined [~~for simpler projects~~] by mutual agreement of the [~~utility and the~~] parties.

B. Scoping [~~study~~ meeting].

1. A scoping meeting will be held within 10 business days after the [~~interconnection request~~ Interconnection Request Form] is deemed complete, or as otherwise mutually agreed to by the parties. The utility and the [~~interconnection customer~~ IC] shall bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting.

2. The purpose of the scoping meeting is to discuss the interconnection request. The parties shall [~~further~~] discuss [~~whether the utility should perform a feasibility study or proceed directly to a system impact study, or a facilities study, or an interconnection agreement~~ the studies and the cost responsibilities for the studies]. [~~If the parties agree that a feasibility study should be performed, the utility shall provide the interconnection customer, as soon as possible, but not later than five business days after the scoping meeting, a feasibility study agreement including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study.~~]

3. The scoping meeting may be omitted by mutual agreement. [~~In order to remain in consideration for interconnection, an interconnection customer who has requested a feasibility study must return the executed feasibility study agreement within 15 business days. If the parties agree not to perform a feasibility study, the utility shall provide the interconnection customer, no later than five business days after the scoping meeting, a system impact study agreement including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study.~~]

C. Feasibility study.

[1. If the parties agree that a feasibility study should be performed, the utility shall provide the IC with a feasibility study agreement, including an outline of the scope of the feasibility study and an estimate of the cost to perform the study no later than five business days after the scoping meeting or five business days after the decision is made to not have a scoping meeting.

If the parties agree to not perform a feasibility study, the utility shall provide the IC a system impact study agreement including an outline of the scope of the study and an estimate of the cost to perform the study no later than five business days after the scoping meeting, or five business days after the decision is made to not have a scoping meeting.

2. To maintain its position in the utility's interconnection queue, the IC must execute the feasibility study agreement and return it to the utility along with the deposit for the feasibility study within 15 business days after receipt of the agreement. If the IC fails to return the executed feasibility study agreement along with the deposit within 15 business days after receipt of the agreement, the interconnection request shall be deemed withdrawn and the interconnection

request shall lose its place in the utility's interconnection queue.]

[~~1.~~ 3.] A feasibility study shall identify any potential adverse system impacts that would result from the interconnection of the [~~small generating facility~~ SGF].

[~~2.~~ 4.] A deposit of [~~the lesser of~~ no more than] 50% of the [~~good faith~~] estimated feasibility study costs or earnest money of $1,000 may be required from the interconnection customer.

a. [~~Any study fees~~ Study costs] shall be [~~based on~~] the [~~distribution company's~~ utility's] actual [incremental] costs and will be invoiced to the [~~interconnection customer~~ IC] after the study is completed and delivered and will include a summary of professional time.

b. The [~~interconnection customer must~~ IC shall] pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the [~~distribution company~~ utility] shall refund such excess within 30 calendar days of the invoice without interest.

[~~3.~~ 5.] The feasibility study shall be based on the technical information provided by the [~~interconnection customer~~ IC] in the [~~interconnection request~~ Interconnection Request Form], as may be modified as the result of the scoping meeting. The [~~distribution company~~ utility] reserves the right to request additional technical information from the [~~interconnection customer~~ IC] as may reasonably become necessary consistent with [Good Utility Practice] during the course of the feasibility study and as designated in accordance with the standard small generator interconnection procedures. [All modification made to the interconnection request shall be made in writing to the utility.] If the interconnection customer modifies its interconnection request, the time to complete the feasibility study may be extended by agreement of the parties.

[~~4.~~ 6.] In performing the [feasibility] study, the [~~distribution company~~ utility] shall rely, to the extent reasonably practicable, on recent studies. The [~~interconnection customer~~ IC] shall not be charged for such existing studies; however, the [~~interconnection customer~~ IC] shall be responsible for charges associated with any new study or modifications to existing studies that are reasonably necessary to perform the feasibility study.

[~~5.~~ 7.] The feasibility study report shall provide the following analyses for the purpose of identifying any potential adverse system impacts that would result from the interconnection of the [~~small generating facility as proposed~~ SGF]:

a. Initial identification of any circuit breaker short circuit capability limits exceeded [~~as a result of the interconnection~~];

b. Initial identification of any thermal overload or voltage limit violations [~~resulting from the interconnection~~];

c. Initial review of grounding requirements and electric system protection; and

d. Description and [~~nonbonding~~] estimated cost of facilities [and estimated construction time] required to interconnect the [~~proposed small generating facility~~ SGF] and to address the identified short circuit and power flow issues.

[~~6.~~ 8.] The feasibility study shall model the impact of the [~~small generating facility regardless of purpose~~ SGF for all purposes identified in the Interconnection Request Form] in order to avoid the further expense and interruption of operation for reexamination of feasibility and impacts if the [~~interconnection customer~~ IC] later changes the purpose for which the [~~small generating facility~~ SGF] is being installed.

[~~7.~~ 9.] The [feasibility] study shall include the feasibility of [~~any interconnection at a proposed project site where there could be multiple~~ all] potential points of interconnection, as requested by the [~~interconnection customer~~ IC] and at the [~~interconnection customer's~~ IC's] cost.

[~~8. Once the feasibility study is completed, a~~ 10. A] feasibility study report shall be prepared and transmitted to the [~~interconnection customer. Barring unusual circumstances, the feasibility study must be completed and the feasibility study report transmitted~~ IC] within 30 business days of the [~~interconnection customer's agreement to conduct a feasibility study~~ utility's receipt of the complete executed feasibility study agreement and required deposit].

[~~9.~~ 11.] If the feasibility study shows no potential for adverse system impacts, [then within five business days] the utility shall send the [~~interconnection customer~~ IC either an executable Small Generator Interconnection Agreement (Schedule 5, 20VAC5-314-170) or] a facilities study agreement, including an outline of the scope of the study and [~~a nonbinding good faith~~ an] estimate of the cost to perform the study.

[~~10.~~ 12.] If the feasibility study shows [~~the~~] potential for adverse system impacts, the review process shall proceed to the [~~appropriate~~] system impact study [~~or studies~~].

D. System impact study.

[1. No later than five business days after the parties agree that a system impact study should be performed, the utility shall provide the IC a system impact study agreement

including an outline of the scope of the system impact study and an estimate of the cost to perform the study.

2. To maintain its position in the utility's interconnection queue, the IC must execute the system impact study agreement and return it to the utility along with the deposit for the system impact study within 15 business days after receipt of the agreement. If the IC fails to return the executed system impact study agreement along with the deposit within 15 business days after receipt of the agreement, the interconnection request shall be deemed withdrawn and the interconnection request shall lose its place in the utility's interconnection queue.

3. A deposit equal to the estimated cost of a system impact study may be required from the IC.

a. Study cost shall be the utility's actual incremental costs and will be invoiced to the IC after the study is completed and delivered and will include a summary of professional time.

b. The IC shall pay any study costs that exceed the deposit within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the utility shall refund the excess within 30 calendar days of the invoice without interest.]

[~~1.~~ 4.] A system impact study shall identify and detail the electric system impacts that would result if the [~~proposed small generating facility~~ SGF] were interconnected without project modifications or electric system modifications, focusing on the adverse [electric] system impacts identified in the feasibility study, or [~~to study potential impacts, including but not limited to those identified~~] in the scoping meeting. A system impact study shall evaluate the impact of the proposed interconnection on the reliability of the electric system.

[~~2.~~ 5.] A system impact study will be based upon the results of the feasibility study and the technical information provided by the interconnection customer in the interconnection request. The [~~distribution company~~ utility] reserves the right to request additional technical information from the [~~interconnection customer~~ IC] as may reasonably become necessary consistent with [Good Utility Practice] during the course of the system impact study. If the [~~interconnection customer~~ IC] modifies its designated point of interconnection, [or] interconnection request, or the technical information provided therein [~~is modified~~], the time to complete the system impact study may be extended.

[~~3.~~ 6.] A system impact study shall consist of a [study of the potentially impacted transmission and distribution systems, a] short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, [~~protection and set point coordination studies, and~~] grounding reviews, [distribution load flow study, analysis of equipment interrupting ratings, protection coordination study, and impacts on electric system operation,] as necessary. A system impact study shall state the assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. A system impact study shall provide a list of facilities [and modifications] that [~~are~~ would be] required as a result of the interconnection [~~request and nonbinding good faith~~ along with] estimates of cost responsibility and time to construct. [If arranged with the utility prior to the utility preparing the system impact study agreement, the system impact study may, at the IC's cost, include one or more alternatives to the point of interconnection; however, such alternative points must be on the same distribution circuit as the point of interconnection the IC specified as the proposed point of interconnection.]

[~~4. A distribution system impact study shall incorporate a distribution load flow study, an analysis of equipment interrupting ratings, protection coordination study, voltage drop and flicker studies, protection and set point coordination studies, grounding reviews, and the impact on electric system operation, as necessary.~~

~~5.~~ 7.] Affected systems may participate in the preparation of a system impact study, with a division of costs among such entities as they may agree. All affected systems shall be afforded an opportunity to review and comment upon a system impact study that covers potential adverse system impacts on their electric systems, and the [~~distribution company~~ utility] has 20 additional business days to complete a system impact study requiring review by affected systems.

[~~6.~~ 8.] If the utility uses a queuing procedure for sorting or prioritizing projects and their associated cost responsibilities for any required network upgrades, the system impact study shall consider all generating facilities (and with respect to clause iii below, any identified upgrades associated with such higher queued interconnection) that, on the date the system impact study is commenced are: (i) directly interconnected with the [~~distribution company's electric~~ utility] system; or (ii) interconnected with affected systems and may have an impact on the proposed interconnection; and (iii) have a pending higher queued interconnection request to interconnect with the [~~utility's electric~~ utility] system.

[~~7.~~ 9.] A [~~distribution~~] system impact study, if required, shall be completed and the results transmitted to the [~~interconnection customer~~ IC] within [~~30~~ 45] business days after an agreement is signed by the parties [~~. A~~

~~transmission system impact study, if required, shall be completed and the results transmitted to the interconnection customer within 45 business days after an agreement is signed by the parties~~], or in accordance with the utility's queuing procedures.

[~~8. A deposit of the equivalent of the good faith estimated cost of a distribution system impact study and one half of the good faith estimated cost of a transmission system impact study may be required from the interconnection customer.~~

~~9. Any study fees shall be based on the utility's actual costs and will be invoiced to the interconnection customer after the study is completed and delivered and will include a summary of professional time.~~

~~10. The interconnection customer shall pay any study costs that exceed the deposit within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the utility shall refund such excess within 30 calendar days of the invoice. Interest shall not apply.~~

~~11. If no transmission system impact study is required, adverse distribution system impacts are identified in the scoping meeting or shown in the feasibility study, a distribution system impact study shall be performed. The utility shall send the interconnection customer a distribution system impact study agreement within 15 business days of transmittal of the feasibility study report, including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study, or following the scoping meeting if no feasibility study is to be performed.~~

~~12. In instances where the feasibility study or the distribution system impact study shows potential for transmission system adverse system impacts, within five business days following transmittal of the feasibility study report, the utility shall send the interconnection customer a transmission system impact study agreement, including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study, if such a study is required.~~

~~13. If a transmission system impact study is not required, but adverse distribution system impacts are shown by the feasibility study to be possible and no distribution system impact study has been conducted, the utility shall send the interconnection customer a distribution system impact study agreement.~~

~~14. If the feasibility study shows no potential for transmission system or distribution system adverse impacts, the utility shall send the interconnection customer either an executable Small Generator Interconnection Agreement (SGIA) included in this chapter as Schedule 5 in 20VAC5-314-170, or a facilities study agreement, including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study, as applicable.~~

~~15. In order to remain under consideration for interconnection, the interconnection customer shall return executed system impact study agreements, if applicable, within 30 business days.~~

10. If the system impact study shows that facility modifications are needed to accommodate the SGF, then within five business days following transmittal of the system impact study report, the utility shall send the IC a facilities study agreement, including an outline of the scope of the study and an estimate of the cost to perform the study.]

E. Facilities study.

1. [~~Once the required system impact study (or studies) is completed, a system impact study report shall be prepared and transmitted to the interconnection customer along with a facilities study agreement within five business days, including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the facilities study. In the case where one or both impact studies are determined to be unnecessary, a notice of the fact shall be transmitted to the interconnection customer within the same timeframe.~~ The facilities study shall specify and estimate the cost of the equipment, engineering, procurement, and construction work needed to implement the conclusion of the feasibility and/or system impact study and to allow SGF to be interconnected and operate safely and reliably.]

[~~2. In order to remain under consideration for interconnection, or, as appropriate, in the utility's interconnection queue, the interconnection customer shall provide the following information, or a request for an extension of time within 30 business days, and the facilities study shall be based on the responses of the IC to the following queries:~~

~~a. Provide a location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, etc. On the one-line diagram, indicate the generation capacity attached at each metering location. (Maximum load on CT (current transformer)/PT (partial transformer) On the one-line diagram, indicate the location of auxiliary power. (Minimum load on CT/PT) Amps~~

~~b. One set of metering is required for each generation connection to the new ring bus or existing distribution company station.~~

~~Number of generation connections: _____~~

~~c. Will an alternate source of auxiliary power be available during CT/PT maintenance?~~

~~Yes _____ No _____~~

~~d. Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation?~~

~~Yes _____ No _____ (Please indicate on the one-line diagram).~~

~~e. What type of control system or Programmable Logic Controller (PLC) will be located at the small generating facility?~~

~~_____~~

~~f. What protocol does the control system or PLC use?~~

~~_____~~

~~g. Provide a 7.5 minute quadrangle map of the site. Indicate the plant, station, transmission line, and property lines.~~

~~h. Physical dimensions of the proposed interconnection station:~~

~~_____~~

~~i. Bus length from generation to interconnection station: _____~~

~~j. Line length from interconnection station to utility's transmission system. _____~~

~~k. Tower number observed in the field. (Painted on tower leg)*:~~

~~_____~~

~~l. Number of third party easements required for transmission lines*: _____~~

~~*To be completed in coordination with distribution company.~~

~~m. Is the small generating facility located in utility's service area? Yes _____ No _____;~~

~~If No, please provide name of local provider:~~

~~_____~~

~~n. Please provide the following proposed schedule dates:~~

~~Begin Construction Date: _____~~

~~Generator step-up transformers receive back feed power date: _____~~

~~Generation Testing Date: _____~~

~~Commercial Operation Date: _____~~

~~3. The facilities study shall specify and estimate the cost of the equipment, engineering, procurement, and construction work (including overheads) needed to implement the conclusions of the system impact study or studies.~~

~~4. A deposit of the good faith estimated facilities study costs may be required from the interconnection customer.~~

~~5. Any study fees shall be based on the distribution company's actual costs and will be invoiced to the interconnection customer after the study is completed and delivered and will include a summary of professional time.~~

~~6. The interconnection customer shall pay any study costs that exceed the deposit within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the distribution company shall refund such excess within 30 calendar days of the invoice. Interest shall not apply.~~

2. To maintain its position in the utility's interconnection queue, the IC must execute the facilities study agreement and return it to the utility along with a completed Facilities Study Information Form (Schedule 5, 20VAC5-314-170) and deposit for the facilities study within 30 business days after receipt of the agreement, unless an extension has been agreed to with the utility. Otherwise, the interconnection request shall be deemed withdrawn and the interconnection request shall lose its place in the utility's interconnection queue.

3. A deposit equal to the estimated cost of a facilities study may be required from the IC.

a. Study cost shall be the utility's actual incremental costs and will be invoiced to the IC after the study is completed and delivered and will include a summary of professional time.

b. The IC shall pay any study costs that exceed the deposit within 30 calendar days after receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the utility shall refund the excess within 30 calendar days of the invoice without interest.]

[~~7.~~ 4.] Design for any required [customer's] interconnection facilities [, attachment facilities,] and/or upgrades shall be performed under the facilities study [~~agreement~~]. The utility may contract with consultants to perform activities required under the facilities study [~~agreement~~]. The [~~interconnection customer~~ IC] and the utility may agree to allow the [~~interconnection customer~~ IC] to separately arrange for the design of some of the [customer's] interconnection facilities. In such cases, facilities design will be reviewed and/or modified prior to acceptance by the utility, under the provisions of the

facilities study [~~agreement~~]. If the parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, the utility shall make sufficient information available to the [~~interconnection customer~~ IC] in accordance with confidentiality and critical infrastructure requirements [,] to permit the [~~interconnection customer~~ IC] to obtain an independent design and cost estimate for any necessary facilities.

[~~8.~~ 5.] The facilities study shall [~~specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusions of the system impact study or studies. The facilities study shall also~~] identify (i) the electrical switching configuration of the equipment, including, without limitation, transformer, switchgear, meters, and other station equipment, (ii) the nature and estimated cost of the [~~utility's interconnection~~ attachment] facilities and [distribution] upgrades necessary to accomplish the interconnection, and (iii) an estimate of the time required to complete the construction and installation of such facilities.

[~~9.~~ 6.] The utility may propose to group facilities required for more than one [~~interconnection customer~~ IC] in order to minimize facilities costs through economies of scale, but any [~~interconnection customer~~ IC] may require the installation of facilities required for its own small generating facility if it [~~is willing to pay~~ pays] the costs of those facilities.

[~~10. Once the facilities study is completed, a facilities study report shall be prepared and transmitted to the interconnection customer. Barring unusual circumstances, the facilities study must be completed and the facilities study report transmitted within 30 business days of the interconnection customer's agreement to conduct a facilities study 11. In cases where upgrades are required, the facilities study must be completed within 45 business days of the receipt of this facilities study agreement. In cases where no upgrades are necessary, and the required facilities are limited to interconnection facilities, the facilities study must be completed within 30 business days.~~

7. In cases where system upgrades are required, the utility shall transmit the facilities study report within 45 business days after receipt of the complete facilities study agreement, Facilities Study Information Form, and the deposit. In cases where no system upgrades are necessary, and the required facilities are limited to customer's interconnection facilities and attachment facilities only, the utility shall transmit the facilities study report within 30 business days after receipt of the complete facilities study agreement, Facilities Study Information Form and the deposit.]

F. [~~Interconnection agreement~~ Small Generator Interconnection Agreement].

1. [~~Upon completion of the facilities study, and with the agreement of the interconnection customer to pay for interconnection facilities and upgrades identified in the facilities study, the utility shall provide the interconnection customer an executable SGIA within five business days~~ Within five business days after transmittal of the final study (i.e. the facilities study, or if applicable, a combined study that satisfies all study requirements), the utility shall provide the interconnection customer an executable SGIA (Schedule 6, 20VAC5-314-170)].

2. After receiving [~~an interconnection agreement~~ the SGIA] from the utility, the [~~interconnection customer~~ IC] shall have 30 business days or another mutually agreeable [~~time frame~~ deadline,] to sign and return the [~~interconnection agreement, or request that the utility file an unexecuted interconnection agreement with the commission~~ SGIA]. If the [~~interconnection customer~~ IC] does not [~~sign~~ return] the [~~interconnection agreement, or ask that it be filed unexecuted by the utility within 30 business days~~ SGIA within the deadline], the interconnection request shall be deemed withdrawn [and the IC shall lose its place in the utility's queue]. After the [~~interconnection agreement~~ SGIA] is signed by the parties, the interconnection of the [~~small generating facility~~ SGF] shall proceed under the provisions of the SGIA.

20VAC5-314-80. Interconnection metering.

Any metering necessitated by the use of the small generating facility shall be installed at the interconnection customer's expense in accordance with commission requirements or the utility's specifications.

20VAC5-314-90. Commissioning tests.

Commissioning tests of the interconnection customer's installed equipment shall be performed pursuant to applicable codes and standards, including IEEE 1547.1 2005 "IEEE Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems." The utility shall be given at least five business days written notice, or notice as otherwise mutually agreed to by the parties, of the tests and [~~may~~ the utility shall] be [allowed to be] present to witness the commissioning tests. The utility shall [not] be compensated by the [~~interconnection customer~~ IC] for [~~its expense in~~] witnessing [~~Level 2 and Level 3~~] commissioning tests.

20VAC5-314-100. Disputes.

A. The parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this section.

B. In the event of a dispute, either party shall provide the other party with a written notice of dispute. The notice shall describe in detail the nature of the dispute. [~~If the dispute has not been resolved within five business days after receipt of the notice, either party may contact a mutually agreed upon third party dispute resolution service for assistance in resolving the dispute~~ The parties shall make a good faith effort to resolve the dispute informally within 10 business days].

C. [If the dispute has not been resolved within 10 business days after receipt of the notice, either party may seek resolution assistance from the commission's Division of Energy Regulation where the matter will be handled as an informal complaint. If that process is unsatisfactory, either party may petition the commission to handle the dispute as a formal complaint.

Alternatively, the parties may seek resolution through the assistance of a dispute resolution service.] The dispute resolution service will assist the parties in either resolving the dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the parties in resolving their dispute. [Each party agrees to conduct all negotiations in good faith and will be responsible for one half of any costs paid to neutral third parties.]

[~~D. Each party agrees to conduct all negotiations in good faith and will be responsible for 1/2 of any costs paid to neutral third parties.~~

~~E.~~ D.] If [~~neither party elects to seek assistance from the dispute resolution service, or if the~~] attempted dispute resolution fails [to satisfy one or both of the parties] , then either party may exercise whatever rights and remedies it may have in equity or law consistent with the terms of the [~~agreements between the parties or it may seek resolution at the commission~~ agreement].

20VAC5-314-110. Confidential information.

A. Confidential information shall mean any confidential and/or proprietary information provided by one party to the other party that is clearly marked or otherwise designated "Confidential." All design, operating specifications, and metering data provided by the [~~interconnection customer~~ IC] shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.

B. Confidential information does not include information previously in the public domain, required to be publicly submitted or divulged by governmental authorities (after notice to the other party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce an agreement between the parties. Each party receiving confidential information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the party providing that information, except to fulfill obligations under agreements between the parties, or to fulfill legal or regulatory requirements.

1. Each party shall employ at least the same standard of care to protect confidential information obtained from the other party as it employs to protect its own confidential information.

2. Each party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this section to prevent the release of confidential information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

C. Notwithstanding anything in this chapter to the contrary, if the commission, during the course of an investigation or otherwise, requests information from one of the parties that is otherwise required to be maintained in confidence, the party shall provide the requested information to the commission, within the time provided for in the request for information. In providing the information to the commission, the party may request that the information be treated as confidential and nonpublic by the commission and that the information be withheld from public disclosure. Parties are prohibited from notifying the other party prior to the release of the confidential information to the commission. [~~The party shall notify the other party when it is notified by the commission that a request to release confidential information has been received by the commission, at which time either of the parties may respond before such information would be made public.~~]

20VAC5-314-120. [~~Comparability~~ Equal treatment].

The utility shall receive, process, and analyze all interconnection requests in a timely manner as set forth in this chapter. The utility shall use the same reasonable efforts in processing and analyzing interconnection requests from all Interconnection customers, whether the [~~small generating facility~~ SGF] is owned or operated by the utility, its subsidiaries or affiliates, or others.

20VAC5-314-130. Record retention.

The utility shall maintain, subject to audit, records for three years of (i) all interconnection requests received pursuant to this chapter, (ii) the times required to complete interconnection request approvals and disapprovals, and (iii) justification for the actions taken on the interconnection requests.

20VAC5-314-140. Coordination with affected systems.

The utility shall coordinate the conduct of any studies required to determine the impact of the [~~interconnection request~~ small generating facility] on affected systems with affected system operators and, if possible, include those results (if available) in its applicable interconnection [~~study~~ studies] within the time frame specified in this chapter. The

utility will include such affected system operators in all meetings held with the [~~interconnection customer~~ IC] as required by this chapter. The [~~interconnection customer~~ IC] shall cooperate with the utility in all matters related to the conduct of studies and the determination of modifications to affected systems. A utility [~~which~~ that] may be an affected system shall cooperate with the utility with [~~whom~~ which] interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to affected systems. [The utility owning or operating the system to which the IC desires to interconnect shall not be held responsible or liable for any delays in the interconnection process attributable to the lack of information or cooperation from the owners or operators of affected systems.]

20VAC5-314-150. Capacity of the small generating facility.

A. If the interconnection request is for an increase in capacity for an existing small generating facility, the interconnection request shall be evaluated on the basis of the new total capacity of the [~~small generating facility~~ SGF].

B. If the interconnection request is for a [~~small generating facility~~ SGF] that includes multiple energy production devices at a site for which the interconnection customer seeks a single point of interconnection, the interconnection request shall be evaluated on the basis of the aggregate capacity of the multiple devices.

C. The interconnection request shall be evaluated using the maximum rated capacity of the [~~small generating facility~~ SGF].

20VAC5-314-160. Insurance.

A. For [~~systems of 500 kW or less~~ a small generating facility with a rated capacity not exceeding 10 kW], the IC, at its own expense, shall secure and maintain in effect during the term of the agreement liability insurance with a combined single limit for bodily injury and property damage of not less than [~~$300,000~~ $100,000] for each occurrence.

[For an SGF with a rated capacity exceeding 10 kW but not exceeding 500 kW, the IC, at its own expense, shall secure and maintain in effect during the term of the agreement liability insurance with a combined single limit for bodily injury and property damage of not less than $300,000 for each occurrence.]

For [~~systems greater than~~ an SGF with a rated capacity exceeding] 500 kW but [~~smaller than~~ not exceeding] 2 MW, the IC, at its own expense, shall secure and maintain in effect during the term of the agreement liability insurance with a combined single limit for bodily injury and property damage of not less than $2 million for each occurrence. Insurance coverage for [~~systems greater than~~ an SGF with a rated capacity exceeding] 2 MW shall be determined on a case-by-case basis [~~by the utility~~] and shall reflect the size of the installation and the potential for system damage.

B. Except for those [~~photovoltaic~~ inverter-based] systems [~~installed on a residential premise~~] that have a [~~design~~ rated] capacity of 500 kW or less, the utility shall be named as an additional insured by endorsement to the insurance policy and the policy shall provide that written notice be given to the utility at least 30 days prior to any cancellation or reduction of any coverage. Such liability insurance shall provide, by endorsement to the policy, that the utility shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for the payment of premium of such insurance. For all [~~photovoltaic~~ inverter-based] systems, the liability insurance shall not exclude coverage for any incident related to the subject generator or its operation.

C. Certificates of insurance evidencing the requisite coverage and provision shall be furnished to [~~a~~ the] utility prior to the date of interconnection of the [~~small generating facility~~ SGF]. [~~Utilities~~ The utility] shall be permitted to periodically obtain proof of current insurance coverage form the [~~producer~~ IC] in order to verify [continuing] proper liability insurance coverage. [The] IC will not be allowed to commence or continue interconnected operations unless evidence is provided that [~~satisfactory~~ required] insurance coverage is in effect at all times.

20VAC5-314-170. Schedules for Chapter 314.

The following schedules shall be used in the administration of this chapter.

Schedule 1

LEVEL 1 INTERCONNECTION REQUEST FORM FOR SMALL GENERATING FACILITY [~~LESS THAN~~ NOT EXCEEDING] 500 kW

PURSUANT TO 20VAC5-314-40 OF THE COMMISSION'S REGULATIONS GOVERNING INTERCONNECTION OF SMALL ELECTRIC GENERATORS, APPLICANT HEREBY GIVES NOTICE OF INTENT TO OPERATE A GENERATING FACILITY.

Section 1. [~~Applicant~~ Interconnection Customer] Information

Name: _____

Mailing Address: _____

[~~City:~~ _____ ~~State:~~ _____ ~~Zip Code:~~ _____

City, State, Zip: _____]

Street Address: _____

[~~City:~~ _____ ~~State:~~ _____ ~~Zip Code:~~ _____

City, State, Zip: _____]

Phone Number(s): _____

Fax Number: _____ Email [~~Address~~]: _____

[~~Facility location (if different from above):~~ _____

~~Distribution Company~~ Utility]: _____

[~~Distribution Company~~ Utility] Account Number: _____

Energy Service Provider [~~(ESP) (if different than electric distribution company)~~]: _____

[~~ESP~~] Account Number [~~(if applicable)~~]: _____

Proposed Interconnection Date: _____

[Section 2. Processing Fee or Deposit

The nonrefundable processing fee payable to the utility is $100.]

Section [~~2.~~ 3. Small] Generating Facility Information

[~~Facility owner and/or Operator name (if different from Applicant):~~ _____

SGF owner: _____

SGF operator: _____]

Business relationship to applicant: _____

Mailing address: _____

[~~City:~~ _____ ~~State:~~ _____ ~~Zip Code:~~ _____

City, State, Zip: _____]

[~~Street~~ SGF] Address: _____

[~~City:~~ _____ ~~State:~~ _____ ~~Zip Code:~~ _____

City, State, Zip: _____]

Phone Number(s): _____

Fax Number: _____ Email [~~Address~~]: _____

Fuel Type: _____

Generator Manufacturer and Model: _____

Rated Capacity in kilowatts: AC: _____ DC: _____

Inverter Manufacturer and Model: _____

Battery Backup [~~(circle one)~~]: Yes No

Section [~~3~~ 4]. Information for Generators with an AC capacity in excess of 25 [~~kilowatts~~ kW]

Is the proposed generator inverter based? Yes No

Generator Type [~~(circle one)~~]: Inverter [_____] Induction [_____] Synchronous [_____]

Frequency: _____ Hz; Number of phases [~~(circle one)~~] : One [____] Three [_____]

Rated Capacity: DC _____ KW; AC apparent _____ KVA; AC real _____ KW;

Power factor _____ %; AC voltage _____ ; AC amperage _____

Facility schematic and equipment layout must be attached to this form.

Section [~~4.~~ 5.] Vendor Certification

The [~~system hardware~~ SGF equipment] is listed by Underwriters Laboratories to be in compliance with UL [-] 1741.

Signed (Vendor): _____ Date: _____

Name (printed): _____

Company: _____

Phone Number: _____

Mailing Address: _____

[~~City: State: Zip Code:~~

City, State, Zip: _____]

Section [~~5.~~ 6.] Electrician Certification

The [~~system~~ generator equipment] has been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code.

Signed (Licensed Electrician): _____ Date: _____

Name (printed): _____

License Number: _____ Phone Number: _____

Mailing Address: _____

[~~City: State: Zip Code:~~

City, State, Zip: _____]

[~~Utility signature signifies only receipt of this form, in compliance with the State Corporation Commission's net energy metering regulations, 20 VAC 5-315-30.~~

~~Signed (Utility Representative): Date:~~]

[Section 7. Applicant Signature]

I hereby certify that, to the best of my knowledge, all of the information provided in this Request Form is true and correct.

Signature of Applicant: _____

Date: _____

[Section 8. Utility Acknowledgement of Receipt

Signed: _____

Title: _____

Utility: _____

Date: _____

Utility signature signifies only receipt of this form, in compliance with 20VAC5-314-40, the State Corporation Commission's Regulations Governing Interconnection of Small Electrical Generators.]

Schedule 2

Certification of Small Generator Equipment Packages

Small generating facility equipment proposed for use separately or packaged with other equipment in an interconnection system shall be considered certified for interconnected operation if (i) it has been tested in accordance with industry standards for continuous utility interactive operation in compliance with the appropriate codes and standards referenced below by any Nationally Recognized Testing Laboratory (NRTL) recognized by the United States Occupational Safety and Health Administration to test and certify interconnection equipment pursuant to the relevant codes and standards listed in SGIP Schedule 3, (ii) it has been labeled and is publicly listed by such NRTL at the time of the interconnection application, and (iii) such NRTL makes readily available for verification all test standards and procedures it utilized in performing such equipment certification, and, with consumer approval, the test data itself. The NRTL may make such information available on its website and by encouraging such information to be included in the manufacturer's literature accompanying the equipment.

The interconnection customer must verify that the intended use of the equipment falls within the use or uses for which the equipment was tested, labeled, and listed by the NRTL.

Certified equipment shall not require further type-test review, testing, or additional equipment to meet the requirements of this interconnection procedure; however, nothing herein shall preclude the need for an on-site commissioning test by the parties to the interconnection nor follow up production testing by the NRTL.

If the certified equipment package includes only interface components (switchgear, inverters, or other interface devices), then an [~~interconnection customer~~ IC] must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and is consistent with the testing and listing specified for this type of interconnection equipment.

Provided the generator or electric source, when combined with the equipment package, is within the range of capabilities for which it was tested by the NRTL, and does not violate the interface components' labeling and listing performed by the NRTL, no further design review, testing or additional equipment on the customer side of the point of [~~common coupling~~ interconnection] shall be required to meet the requirements of this interconnection procedure.

An equipment package does not include equipment provided by the utility.

Schedule 3

Certification Codes and Standards

IEEE1547 Standard for Interconnecting Distributed Resources with Electric Power Systems (including use of IEEE 1547.1 testing protocols to establish conformity)

UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems

IEEE Std 929-2000 IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems

NFPA 70 (2005), National Electrical Code

IEEE Std C37.90.1-1989 (R1994), IEEE Standard Surge Withstand Capability (SWC) Tests for Protective Relays and Relay Systems

IEEE Std C37.90.2 (1995), IEEE Standard Withstand Capability of Relay Systems to Radiated Electromagnetic Interference from Transceivers

IEEE Std C37.108-1989 (R2002), IEEE Guide for the Protection of Network Transformers

IEEE Std C57.12.44-2000, IEEE Standard Requirements for Secondary Network Protectors

IEEE Std C62.41.2-2002, IEEE Recommended Practice on Characterization of Surges in Low Voltage (1000V and Less) AC Power Circuits

IEEE Std C62.45-1992 (R2002), IEEE Recommended Practice on Surge Testing for Equipment Connected to Low-Voltage (1000V and Less) AC Power Circuits

ANSI C84.1-1995 Electric Power Systems and Equipment – Voltage Ratings (60 Hertz)

IEEE Std 100-2000, IEEE Standard Dictionary of Electrical and Electronic Terms

NEMA MG 1-1998, Motors and Small Resources, Revision 3

IEEE Std 519-1992, IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems

NEMA MG 1-2003 (Rev 2004), Motors and Generators, Revision 1

Schedule 4

[~~LEVEL~~ LEVELS] 2 AND 3 INTERCONNECTION REQUEST FORM [~~FOR~~] SMALL GENERATING [~~FACILITIES~~ FACILITY] LESS THAN 20 MW

[~~Distribution Company:~~ _____

~~Designated Contact Person:~~ _____

~~Address:~~ _____

~~Telephone Number:~~ _____

~~Fax:~~ _____

~~E-Mail Address:~~ _____

~~An Interconnection Request is considered complete when it provides all applicable and correct information required below.~~

~~Processing Fee or Deposit~~

~~If the Interconnection Request is submitted as Level 2, the nonrefundable processing fee payable to the distribution company is $500.~~

~~If the interconnection request is submitted as Level 3, the interconnection customer shall submit to the distribution company a deposit not to exceed $1,000 towards the cost of the feasibility study.~~

~~Interconnection Customer Information~~

~~Legal Name of the Interconnection Customer (or, if an individual, individual's name)~~

~~Name:~~ _____

~~Account Number:~~ _____

~~Contact person:~~ _____

~~Mailing Address:~~ _____

~~City: State: Zip:~~ _____

~~Facility location (if different from above):~~ _____

~~Telephone (Day):~~ _____ ~~Telephone (Evening):~~ _____

~~Fax:~~ _____ ~~E-Mail Address:~~ _____

~~Alternative contact information (if different from the interconnection customer)~~

~~Contact Name:~~ _____

~~Title:~~ _____

~~Address:~~ _____

~~Telephone (Day):~~ _____ ~~Telephone (Evening):~~ _____

~~Fax:~~ _____ ~~E-Mail Address:~~ _____

~~Application is for:~~ ~~New Small Generating Facility~~

~~Capacity addition to Existing Small Generating~~

~~Facility~~

~~If capacity addition to existing facility, please describe:~~

~~Will the Small Generating Facility be used for any of the following?~~

~~To supply power to the interconnection customer? Yes No~~

~~To supply power to others? Yes No~~

~~Contact Name:~~

~~Title:~~

~~Address:~~

~~Telephone (Day): Telephone (Evening):~~

~~Fax: E-Mail Address:~~

~~Requested point of interconnection:~~

~~Interconnection customer's requested in-service date:~~

Section 1. Interconnection Customer Information

Name:

Contact person:

Mailing address:

City: State:
Zip:

Utility and account number:

Energy Service Provider and account number:

Facility address:

Telephone (Day): (Evening):

Fax: E-Mail:

Alternative contact information

Contact Name:

Title:

Mailing Address:

City: State:
Zip:

Telephone (Day): (Evening):

Fax: E-Mail:

Application is for: New Small Generating Facility _____ Capacity addition _____

If capacity addition to existing facility, please describe:

The Small Generating Facility will supply: Interconnection Customer ___ others ____

Point of Interconnection:

Interconnection Customer's requested in-service date:

Section 2. Processing Fee or Deposit

If the Interconnection Request is submitted as Level 2, the nonrefundable processing fee payable to the utility is $500.

If the Interconnection Request is submitted as Level 3, the Interconnection Customer shall submit to the Utility the deposit is $1,000, or 50% of the estimated cost of the Feasibility Study, whichever is less.

Section 3.] Small Generating Facility Information

Data apply only to the small generating facility, not the interconnection facilities.

Energy Source: Solar Wind Hydro Hydro Type [~~(e.g. Run-of-River)~~]:_____

Diesel ___ Natural Gas ___ Fuel Oil ___ Other ([~~state type~~ describe])

Prime Mover: Fuel Cell__ Recip Engine__ Gas Turb__ Steam Turb__ Microturbine__ PV__ Other [(describe)]

Type of Generator: [____] Synchronous ____Induction ____ Inverter [___]

Generator Nameplate Rating: kW [~~(Typical)~~]
Generator Nameplate kVAR: _____

Interconnection customer or customer-site load:
kW [~~(if none, so state)~~]

Typical reactive load [~~(if known)~~]: _____

Maximum physical export capability requested: _____ kW

List components of the small generating facility equipment package that are currently certified:

Equipment [~~Type~~]	Certifying Entity
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____
4. _____	4. _____
5. _____	5. _____

Is the prime mover compatible with the certified protective relay package? [____]Yes ____No [____]

Generator (or solar collector)

Manufacturer, model name & number: _____

Version Number: _____

Nameplate Output Power Rating in kW: (Summer) _____ (Winter) _____

Nameplate Output Power Rating in kVA: (Summer) _____ (Winter) _____

Individual Generator Power Factor

Rated Power Factor: Leading: _____ Lagging: _____

Total number of generators in wind farm to be interconnected pursuant to this

Interconnection Request: [_____] Elevation: _____

___Single phase ___Three phase [_____]

Inverter manufacturer, model name & number [~~(if used)~~]: _____

List of adjustable set points for the protective equipment or software: _____

Note: A completed power systems load flow data sheet must be supplied with the Interconnection Request.

Small Generating Facility Characteristic Data (for inverter-based machines)

Max design fault contribution current: _____ Instantaneous _____ or RMS [~~?~~] _____

Harmonics characteristics:

_____

Start-up requirements:

_____

Small Generating Facility Characteristic Data (for rotating machines)

RPM Frequency:

_____

[~~(*)~~] Neutral Grounding Resistor (If Applicable):

_____

Synchronous Generators:

Direct Axis Synchronous Reactance, Xd: _____ P.U.

Direct Axis Transient Reactance, X'_d: _____ P.U.

Direct Axis Subtransient Reactance, X''_d: _____ P.U.

Negative Sequence Reactance, X_2: _____ P.U.

Zero Sequence Reactance, X_0: _____ P.U.

KVA Base: _____

Field Volts: _____

Field Amperes: _____

Induction Generators:

Motoring Power (kW): _____

[~~I2 2t~~ I^2t] or K (Heating Time Constant): _____

Rotor Resistance, Rr: _____

Stator Resistance, Rs: _____

Stator Reactance, Xs: _____

Rotor Reactance, Xr: _____

Magnetizing Reactance, Xm: _____

Short Circuit Reactance, Xd": _____

Exciting Current: _____

Temperature Rise: _____

Frame Size: _____

Design Letter: _____

Reactive Power Required In Vars (No Load):

_____

Reactive Power Required In Vars (Full Load):

_____

Total Rotating Inertia, H: _____ Per Unit on kVA [~~Base~~ base]

Excitation and Governor System Data for Synchronous Generators Only

Provide appropriate IEEE model block diagram of excitation system, governor system and power system stabilizer (PSS) in accordance with the regional reliability council criteria. A PSS may be determined to be required by applicable studies. A copy of the manufacturer's block diagram may not be substituted.

[Section 4. Customer's] Interconnection Facilities Information

Will a transformer be used between the generator and the point of [~~common coupling~~ interconnection] ? [___] Yes ____ No [____]

Will the transformer be provided by the interconnection customer? [____] Yes ____ No [____]

Transformer Data (If applicable, for interconnection customer-owned transformer):

Is the transformer: [____] single phase _____ three phase [~~?~~ ___] Size: [_____] kVA [_____]

Transformer Impedance: _____ % on _____ kVA [~~Base~~ base]

If Three Phase:

Transformer Primary: _____ Volts _____ Delta _____ Wye _____ Wye Grounded

Transformer Secondary: _____ Volts _____ Delta _____ Wye _____ Wye Grounded

Transformer Tertiary: _____ Volts _____ Delta _____ Wye _____ Wye Grounded

Transformer Fuse Data (If applicable, for interconnection customer-owned fuse):

(Attach copy of fuse manufacturer's minimum melt and total clearing time-current curves)

Manufacturer: _____ Type: _____ Size: _____ Speed: _____

Interconnecting Circuit Breaker (if applicable):

Manufacturer: _____ Type: _____

Load Rating (Amps): _____ Interrupting Rating (Amps): _____ Trip Speed (Cycles): _____

Interconnection Protective Relays (If Applicable):

If microprocessor-controlled:

Manufacturer: _____ Type: _____ Model No. _____

Firmware ID: _____ Instruction Book No. _____

List of functions and adjustable setpoints for the protective equipment or software:

Setpoint Function	Minimum	Maximum
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

If Discrete Components:

(Enclose copy of any proposed time-overcurrent coordination curves)

Manufacturer: Type: Style/Catalog No.: Proposed Setting:

Manufacturer: Type: Style/Catalog No.: Proposed Setting:

Manufacturer: Type: Style/Catalog No.: Proposed Setting:

Manufacturer: Type: Style/Catalog No.: Proposed Setting:

Manufacturer: Type: Style/Catalog No.: Proposed Setting:

Current Transformer Data (If applicable):

(Enclose copy of manufacturer's excitation and ratio correction curves)

Manufacturer:

Type: Accuracy Class: Proposed Ratio Connection:

Manufacturer:

Type: Accuracy Class: Proposed Ratio Connection:

Potential Transformer Data (If applicable):

Manufacturer:

Type: Accuracy Class: Proposed Ratio Connection:

Manufacturer:

Type: Accuracy Class: Proposed Ratio Connection:

[Section 5.] General Information

Enclose [a] copy of [the] site electrical one-line diagram showing the configuration of [~~all~~ the] small generating facility equipment, current and potential circuits, and protection and control schemes.

Enclose [a] copy of any site documentation that indicates the precise physical location of the proposed [~~small generating facility~~ SGF] (e.g., United States Geological Survey [(~~USGS~~)] topographic map or other diagram or documentation).

[~~Proposed~~ Describe the proposed] location of [the] protective interface equipment on [the] property [~~(include address if different from the interconnection customer's address)~~]

Enclose [a] copy of any site documentation that describes and details the operation of the protection and control schemes. Is available documentation enclosed? [___] Yes ___ No [____]

Enclose copies of schematic drawings for all protection and control circuits, relay current circuits, relay potential circuits, and alarm/monitoring circuits (if applicable).

Are schematic drawings enclosed? [___] Yes ____No [____]

[~~Applicant~~ Section 6. Interconnection Customer] Signature

I hereby certify that, to the best of my knowledge, all the information provided in this Interconnection Request is true and correct.

[~~For Interconnection Customer~~ Signature] :
Date:

[**Section 7. Utility Acknowledgement of Receipt**

Signed:

Title:

Utility:

Date:

Utility signature signifies only receipt of this form, in compliance with 20VAC5-314-50 of the State Corporation Commission's Regulations Governing Interconnection of Small Electrical Generators.]

[**Schedule 5**

LEVELS 2 AND 3 FACILITIES STUDY INFORMATION FORM FOR SMALL GENERATING FACILITIES LESS THAN 20 MW

1. Provide a location plan and simplified one-line diagram of the plant and station facilities. For staged projects, indicate

future generation, future transmission circuits, and other major future facilities. On the one-line diagram, show (i) each generator, its electric connection configuration, and its generation capacity, (ii) the location and capacity of auxiliary power, and (iii) minimum load on CT/PT.

2. One set of metering is required for each generation connection to the new ring bus or existing utility station. Indicate the number of generation connections requiring a metering set: _____

3. Indicate whether an alternate source of auxiliary power will be available during CT/PT maintenance. Yes _____ No _____

4. Indicate whether a transfer bus on the generation side of the metering will require that each meter set be designed for the total plant generation. Indicate such on the one-line diagram. Yes _____ No _____

5. State the type of control system or Programmable Logic Controller (PLC) that will be located at the small generating facility.

_____

_____

6. State the protocol used by the control system or PLC.

_____

_____

7. Provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, transmission line, and property lines.

8. State the physical dimensions of the proposed interconnection station.

_____

_____

_____

9. State the bus length from generation to interconnection station.

_____

_____

_____

10. Provide a diagram or description of the point of interconnection desired by the IC that is to be the point of interconnection in the system impact study report.

11. State the line length from interconnection station to utility system.

_____

_____

_____

12. State the pole or tower number observed in the field affixed to the pole or tower leg.

_____

13. State the number of third party easements required for distribution or transmission lines.

_____

_____

_____

14. Provide the following proposed schedule dates:

a. Date IC to begin construction: _____

b. Date generator step-up transformers to receive back feed power: _____

c. Date IC will test SGF: _____

d. Date IC will place SGF into commercial operation: _____]

-

Schedule [~~5~~ 6]

[LEVEL 3] SMALL GENERATOR INTERCONNECTION AGREEMENT (SGIA)
[~~(For Small Generating Facilities Subject to the Level 3 Process)~~]

This [Small Generator] Interconnection Agreement ("Agreement") is made and entered into this _____ day of _____, 20__, by _____

[("~~Distribution Company~~ Utility]"), and

_____

("Interconnection Customer") each hereinafter sometimes referred to individually as "Party" or both referred to collectively as the "Parties."

[~~Distribution Company~~ Utility] Information

[~~Distribution Company~~ Utility]:

_____

Attention:

_____

Address:

_____

_____

[~~City: _____ State: _____ Zip: _____~~

City, State,
Zip: _____]

Phone: _____ Fax: _____

Interconnection Customer Information

Interconnection Customer:

Attention:

Address:

[~~City: State: Zip:~~

City, State,
Zip:]

Phone: Fax:

Interconnection Customer Application No:

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 This Agreement shall be used for all Interconnection Requests submitted under the [~~Small Generator Interconnection Procedures (SGIP)~~ Level 3 interconnections pursuant to the Commission's Regulations Governing Interconnection of Small Electrical Generators, Chapter 314 of the Virginia Administrative Code].

1.2 This Agreement governs the terms and conditions under which the Interconnection Customer's [("IC")] Small Generating Facility [("SGF")] will interconnect with, and operate in parallel with, the [~~utility's distribution~~ utility] system.

1.3 This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power. The purchase or delivery of power and other services [, including station service or backup power,] that the [~~Interconnection Customer~~ IC] may require will be covered under separate agreements [, possibly with other parties]. The [~~Interconnection Customer~~ IC] will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable [~~Distribution Company~~ utility and provider of transmission service].

1.4 Nothing in this Agreement is intended to affect any other agreement between the [~~Distribution Company~~ utility] and the [~~Interconnection Customer~~ IC].

1.5 Responsibilities of the Parties

1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all applicable laws and regulations, operating requirements, and Good [~~Distribution Company~~ Utility] Practice.

1.5.2 The [~~Interconnection Customer~~ IC] shall construct, interconnect, operate and maintain its [~~Small Generating Facility~~ SGF] and construct, operate, and maintain its [Customer's] Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, in accordance with this Agreement, and with Good [~~Distribution Company~~ Utility] Practice.

1.5.3 The [~~Distribution Company~~ utility] shall construct, operate, and maintain its distribution and transmission system and [~~interconnection~~ attachment] facilities in accordance with this Agreement, and with Good [~~Distribution Company~~ Utility] Practice.

1.5.4 The [~~Interconnection Customer~~ IC] agrees to construct its facilities [~~or systems~~] in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, and operating requirements in effect at the time of construction and other applicable national and state codes and standards. The [~~Interconnection Customer~~ IC] agrees to design, install, maintain, and operate its [~~small generating facility~~ SGF] so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of the [~~Distribution Company~~ utility] or affected systems [and to otherwise maintain and operate its SGF in accordance with the specifications and certifications under which the SGF was initially installed and interconnected].

1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Attachments to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The [~~Distribution Company~~ utility] and the [~~Interconnection Customer~~ IC], as appropriate, shall provide [~~Interconnection~~ Attachment] Facilities [and Customer's Interconnection Facilities] that adequately protect the [~~Distribution Company's Transmission System,~~ utility's] personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of [~~Interconnection~~ Attachment] Facilities [and Customer's Interconnection Facilities] shall be delineated in the Attachments to this Agreement. [The design, installation, operation, and maintenance of such facilities shall be the

responsibility of the owner except as otherwise provided for in this Agreement.]

1.5.6 The [~~Distribution Company~~ utility] shall coordinate with all affected systems to support the interconnection.

1.6 Parallel operation obligations

Once the [~~small generating facility~~ SGF] has been authorized to commence parallel operation, the [~~Interconnection Customer~~ IC] shall abide by all rules and procedures pertaining to the parallel operation of the [~~small generating facility~~ SGF] including, but not limited to the rules and procedures concerning the operation of generation set forth in the tariff.

1.7 Metering

The [~~Interconnection Customer~~ IC] shall be responsible for the [~~Distribution Company's~~ utility's] reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Attachments 2 and 3 of this Agreement. The [~~Interconnection Customer's~~ IC's] metering (and data acquisition, as required) equipment shall conform to applicable industry rules and operating requirements.

1.8 Reactive power

1.8.1 The [~~Interconnection Customer~~ IC] shall design its [~~small generating facility~~ SGF] to maintain a composite power delivery at continuous rated power output at the point of interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the [~~Distribution Company~~ utility] has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.

1.8.2 The [~~Distribution Company~~ utility] is required to pay the Interconnection Customer for reactive power that the [~~Interconnection Customer~~ IC] provides or absorbs from the [~~small generating facility~~ SGF] when the [~~Distribution Company~~ utility] requests the [~~Interconnection Customer~~ IC] to operate its [~~small generating facility~~ SGF] outside the range specified in article 1.8.1. In addition, if the [~~Distribution Company~~ utility] pays its own or affiliated generators for reactive power service within the specified range, it must [~~also~~ similarly] pay the [~~Interconnection Customer~~ IC].

1.8.3 Payments shall be in accordance with the [~~Interconnection Customer's~~ IC's] applicable rate schedule [~~then~~ as may be] in effect [and accepted by the appropriate government authority]. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb reactive power under this Agreement, the [~~Parties agree to~~ IC may] expeditiously file such rate schedule [~~and agree~~ with the appropriate government authority, and the utility agrees] to support any request for waiver of [~~the State Corporation Commission's~~ any] prior notice requirement [of such authority] in order to [~~compensate~~ permit compensation to] the [~~Interconnection Customer~~ IC] from the time service commenced.

1.9 Capitalized terms used herein shall have the meanings specified in the [~~Glossary of Terms~~ definitions] in Attachment 1 to Schedule [~~5~~ 6] or [in] the body of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Equipment testing and inspection

2.1.1 The Interconnection Customer shall test and inspect its small generating facility and interconnection facilities prior to interconnection. The [~~Interconnection Customer~~ IC] shall notify the [~~Distribution Company~~ utility] of such activities no fewer than five business days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a business day. The [~~Distribution Company~~ utility] may, at its own expense, send qualified personnel to the [~~small generating facility~~ SGF] site to inspect the interconnection and observe the testing. The [~~Interconnection Customer~~ IC] shall provide the [~~Distribution Company~~ utility] a written test report when such testing and inspection is completed.

2.1.2 The [~~Distribution Company~~ utility] shall provide the [~~Interconnection Customer~~ IC] written acknowledgment that it has received the [~~Interconnection Customer's~~ IC's] written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the [~~Distribution Company~~ utility] of the safety, durability, suitability, or reliability of the [~~small generating facility~~ SGF] or any associated control, protective, and safety devices owned or controlled by the [~~Interconnection Customer~~ IC] or the quality of power produced by the [~~small generating facility~~ SGF].

2.2 Authorization required prior to parallel operation

2.2.1 The [~~Distribution Company~~ utility] shall use reasonable efforts to list applicable parallel operation requirements in Attachment 5 of this Agreement. Additionally, the [~~Distribution Company~~ utility] shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The [~~Distribution Company~~ utility] shall make reasonable efforts to cooperate with the [~~Interconnection Customer~~ IC] in meeting requirements necessary for the [~~Interconnection Customer~~ IC] to commence parallel operations by the in-service date.

2.2.2 The [~~Interconnection Customer~~ IC] shall not operate its [~~small generating facility~~ SGF] in parallel with the [~~Distribution Company's~~ utility's] system without prior written authorization of the [~~Distribution Company~~ utility]. The [~~Distribution Company~~ utility] will provide such authorization once the [~~Distribution Company~~ utility] receives notification that the [~~Interconnection Customer~~ IC] has complied with all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.3 Right of access

2.3.1 Upon reasonable notice, the [~~Distribution Company~~ utility] may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the [~~small generating facility~~ SGF] first produces energy to inspect the interconnection, and observe the commissioning of the [~~small generating facility~~ SGF] (including any required testing), startup, and operation for a period of up to three business days after initial start-up of the unit. In addition, the [~~Interconnection Customer~~ IC] shall notify the [~~Distribution Company~~ utility] at least five business days prior to conducting any on-site verification testing of the [~~small generating facility~~ SGF].

2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the [~~Distribution Company~~ utility] shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

2.3.3 Each Party shall be responsible for its own costs associated with [~~following~~] this article.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective date

This Agreement shall become effective upon execution by the Parties [~~subject to acceptance by the State Corporation Commission's Division of Energy Regulation (if applicable), or if filed unexecuted, upon the date specified by the State Corporation Commission's Division of Energy Regulation~~]. The [~~Distribution Company~~ utility] shall promptly file this Agreement with the [~~State Corporation~~] Commission's Division of Energy Regulation upon execution [~~, if required~~].

3.2 Term of Agreement

This Agreement [~~shall become effective on the effective date and~~] shall remain in effect for a period of 10 years from the effective date or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with article 3.3 of this Agreement.

3.3 Termination

No termination shall become effective until the Parties have complied with all applicable laws and regulations applicable to such termination, including the filing with the [~~State Corporation~~] Commission's Division of Energy Regulation of a notice of termination of this Agreement [~~(if required), which notice has been accepted for filing by commission's Division of Energy Regulation~~].

3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the [~~Distribution Company~~ utility] 20 business days written notice.

3.3.2 Either Party may terminate this Agreement after default pursuant to article 7.6.

3.3.3 Upon termination of this Agreement, the [~~small generating facility~~ Small Generating Facility] will be disconnected from the [~~Distribution Company's~~ utility] system. The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

[~~3.3.4 This provisions of this article shall survive termination or expiration of this Agreement.~~]

3.4 Temporary disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good [~~Distribution Company~~ Utility] Practice.

3.4.1 Emergency Conditions -- "Emergency Condition" shall mean a condition or situation: (i) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (ii) that, in the case of the [~~Distribution Company~~ utility], is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the [~~distribution~~ utility] system, the [~~Distribution Company's Interconnection~~ Attachment] Facilities or the electrical facilities of others to which the [~~Distribution Company's distribution~~ utility] system is directly connected; or (iii) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the [~~small generating facility~~ Small Generating Facility] or the [~~Interconnection~~] Customer's [~~interconnection facilities~~ Interconnection Facilities]. Under emergency conditions, the [~~Distribution Company~~ utility] may immediately suspend interconnection service and temporarily disconnect the [~~small generating facility~~ SGF]. The [~~Distribution Company~~ utility] shall notify the [~~Interconnection Customer~~ IC] promptly when it becomes

aware of an emergency condition that may reasonably be expected to affect the [~~Interconnection Customer's~~ IC's] operation of the [~~small generating facility~~ SGF]. The [~~Interconnection Customer~~ IC] shall notify the [~~Distribution Company~~ utility] promptly when it becomes aware of an emergency condition that may reasonably be expected to affect the [~~Distribution Company's~~ utility] system or other affected systems. To the extent information is known, the notification shall describe the emergency condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine maintenance, construction, and repair

The [~~Distribution Company~~ utility] may interrupt interconnection service or curtail the output of the [~~small generating facility~~ SGF] and temporarily disconnect the [~~small generating facility~~ SGF] from the [~~Distribution Company's distribution~~ utility's] system when necessary for routine maintenance, construction, and repairs on the [~~Distribution Company's distribution~~ utility] system. The [~~Distribution Company~~ utility] shall provide the [~~Interconnection Customer~~ IC] with [at least] five business days notice prior to such interruption [unless circumstances require shorter notice]. The [~~Distribution Company~~ utility] shall use reasonable efforts to coordinate such reduction or temporary disconnection with the [~~Interconnection Customer~~ IC].

3.4.3 Forced outages

During any forced outage, the [~~Distribution Company~~ utility] may suspend interconnection service to effect immediate repairs on the [~~Distribution Company's distribution~~ utility] system. The [~~Distribution Company~~ utility] shall use reasonable efforts to provide the [~~Interconnection Customer~~ IC] with prior notice. If prior notice is not given, the [~~Distribution Company~~ utility] shall, upon request, provide the [~~Interconnection Customer~~ IC] written documentation after the fact explaining the circumstances of the disconnection.

3.4.4 Adverse operating effects

The [~~Distribution Company~~ utility] shall notify the [~~Interconnection Customer~~ IC] as soon as practicable if, based on Good [~~Distribution Company~~ Utility] Practice, operation of the [~~small generating facility~~ SGF] may cause disruption or deterioration of service to other customers served from the [~~same electric~~ utility] system [or affected systems], or if operating the [~~small generating facility~~ SGF] could cause damage to the [~~Distribution Company's distribution~~ utility] system or affected systems. Supporting documentation used to reach the decision to disconnect shall be provided to the [~~Interconnection Customer~~ IC] upon request. If, after notice, the [~~Interconnection Customer~~ IC] fails to remedy the adverse operating effect within a reasonable time, the [~~Distribution Company~~ utility] may disconnect the [~~small generating facility~~ SGF]. The [~~Distribution Company~~ utility] shall provide the [~~Interconnection Customer~~ IC] with a five business day notice of such disconnection, unless the provisions of article 3.4.1 apply.

3.4.5 Modification of the [~~small generating facility~~ Small Generating Facility]

The Interconnection Customer must receive written authorization from the [~~Distribution Company~~ utility] before making [~~any change~~ changes] to the [~~small generating facility~~ SGF or mode of operations] that may have a material impact on the safety or reliability of the [~~Distribution Company's~~ utility] system [or affected system]. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good [~~Distribution Company~~ Utility] Practice. If the [~~Interconnection Customer~~ IC] makes such [~~modification~~ modifications] without the [~~Distribution Company's~~ utility's] prior written authorization, the latter shall have the right to temporarily disconnect the [~~small generating facility~~ SGF].

3.4.6 Reconnection

The Parties shall cooperate with each other to restore the [~~small generating facility~~ SGF], interconnection facilities, and the [~~Distribution Company's distribution~~ utility] system to their normal operating state as soon as reasonably practicable following a temporary disconnection.

Article 4. Cost Responsibility for [Customer's] Interconnection Facilities [, Attachment Facilities,] and Distribution Upgrades

4.1 [Customer's] Interconnection [~~facilities~~ Facilities]

[The IC shall be responsible for the costs associated with owning, operating, maintaining, repairing, and replacing the Customer's Interconnection Facilities.]

[~~4.1.1~~ 4.2 Attachment Facilities]

The [~~Interconnection Customer~~ IC] shall pay for [~~the cost of~~ one-time and ongoing costs of installing, owning, operating, maintaining and replacing] the [~~interconnection~~ attachment] facilities itemized in Attachment 2 of this Agreement. The [~~Distribution Company~~ utility] shall provide [~~a best estimate~~ an estimated] cost [~~, including overheads,~~] for the purchase and construction of [~~its interconnection~~ the attachment] facilities and provide a detailed itemization of such costs. Costs associated with [~~interconnection~~ attachment] facilities may be shared with other entities that may benefit from such facilities by agreement of the [~~Interconnection Customer~~ IC], such other entities, and the [~~Distribution Company~~ utility].

[4.1.2 The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with (i) owning, operating, maintaining, repairing, and replacing its own interconnection facilities, and (ii) operating, maintaining, repairing, and replacing the Distribution Company's interconnection facilities.

4.2 4.3] Distribution upgrades

The [Distribution Company utility] shall design, procure, construct, install, and own the distribution upgrades described in Attachment 6 of this Agreement. [The actual cost of the distribution upgrades shall be directly assigned to the IC.] If the [Distribution Company utility] and the [Interconnection Customer IC] agree, the [Interconnection Customer IC] may construct distribution upgrades that are located on land owned by the [Interconnection Customer IC]. [The actual cost of the distribution upgrades, including overheads, shall be directly assigned to the Interconnection Customer.]

[Article 5. Cost Responsibility for System Upgrades

5.1 Applicability

No portion of this article 5 shall apply unless the interconnection of the small generating facility requires system upgrades.

5.2 System upgrades

The Distribution Company shall design, procure, construct, install, and own the system upgrades described in Attachment 3 of this Agreement. If the Distribution Company and the Interconnection Customer agree, the Interconnection Customer may construct system upgrades that are located on land owned by the Interconnection Customer. Unless the Distribution Company elects to pay for system upgrades, the actual cost of the system upgrades, including overheads, shall be borne initially by the Interconnection Customer.

5.2.1 Repayment of amounts advanced for system upgrades

The Interconnection Customer shall be entitled to a cash repayment, equal to the total amount paid to the Distribution Company and affected system operator, if any, for system upgrades, including any tax gross-up or other tax related payments associated with the system upgrades, and not otherwise refunded to the Interconnection Customer, to be paid to the Interconnection Customer on a dollar for dollar basis for the nonusage sensitive portion of transmission charges, as payments are made under the Distribution Company's tariff and affected system's tariff for distribution services with respect to the small generating facility. Upgrades through the date on which the Interconnection Customer receives a repayment of such payment pursuant to this subparagraph. The Interconnection Customer may assign such repayment rights to any person.

5.2.1.1 Notwithstanding the foregoing, the Interconnection Customer, the Distribution Company, and affected system operator may adopt any alternative payment schedule that is mutually agreeable so long as the Distribution Company and affected system operator take one of the following actions no later than five years from the commercial operation date: (i) return to the Interconnection Customer any amounts advanced for system upgrades not previously repaid, or (ii) declare in writing that the Distribution Company or affected system operator will continue to provide payments to the Interconnection Customer on a dollar for dollar basis for the nonusage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for system upgrades not previously repaid; however, full reimbursement shall not extend beyond 20 years from the commercial operation date.

5.2.1.2 If the small generating facility fails to achieve commercial operation, but it or another generating facility is later constructed and requires use of the system upgrades, the Distribution Company and affected system operator shall at that time reimburse the Interconnection Customer for the amounts advanced for the system upgrades. Before any such reimbursement can occur, the Interconnection Customer, or the entity that ultimately constructs the generating facility, if different, is responsible for identifying the entity to which reimbursement must be made.

5.3 Special provisions for affected systems

Unless the Distribution Company provides, under this Agreement, for the repayment of amounts advanced to affected system operator for system upgrades, the Interconnection Customer and affected system operator shall enter into an agreement that provides for such repayment. The agreement shall specify the terms governing payments to be made by the Interconnection Customer to affected system operator as well as the repayment by affected system operator.

Article 5. Transmission System

5.1 Transmission system upgrades

5.1.1 No portion of section 5.1 of this article 5 shall apply unless the interconnection of the Small Generating Facility requires transmission system upgrades.

5.1.2 The utility shall design, procure, construct, install, and own the transmission system upgrades described in Attachment 6 of this Agreement. If the utility and the Interconnection Customer agree, the IC may construct transmission system upgrades that are located on land

owned by the IC. The costs of the transmission system upgrades shall be borne by the IC.

5.1.3 Notwithstanding any other provision of section 5.1 of article 5, in the event and to the extent an RTE has rules, tariffs, agreements, or procedures properly applying to transmission system upgrades, the provisions of section 5.2 of article 5 shall apply to such upgrades.

5.2 Regional Transmission Entities

Notwithstanding any other provision of this Agreement, if the utility's transmission system is under the control of an RTE and the RTE has rules, tariffs, agreements or procedures properly governing operation of the SGF, transmission of the output of the SGF, sale of the output of the SGF, system upgrades required for interconnection of the SGF, or other aspects of the interconnection and operation of the SGF, the IC and the utility shall comply with the applicable of such agreements, rules, tariffs, or procedures.]

[~~5.4~~ 5.3] Rights under other agreements

Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the [~~Interconnection Customer~~ IC] shall be entitled to, now or in the future, under any other agreement or tariff as a result of, or otherwise associated with system upgrades, including the right to obtain cash reimbursements or transmission credits for transmission service that is not associated with the [~~small generating facility~~ SGF].

Article 6. Billing, Payment, Milestones, and Financial Security

6.1 Billing and payment procedures and final accounting

6.1.1 The [~~Distribution Company~~ utility] shall bill the [~~Interconnection Customer~~ IC] for the design, engineering, construction, and procurement costs of [~~interconnection~~ attachment] facilities and upgrades contemplated by this Agreement on a monthly basis, or as otherwise agreed by the Parties. The [~~Interconnection Customer~~ IC] shall pay each bill within 30 calendar days of receipt, or as otherwise agreed to by the Parties.

6.1.2 Within [~~three months~~ 120 calendar days] of completing the construction and installation of the [~~Distribution Company's interconnection~~ attachment] facilities and/or [distribution] upgrades described in the Attachments to this Agreement, the [~~Distribution Company~~ utility] shall provide the [~~Interconnection Customer~~ IC] with a final accounting report of any difference between (i) the [~~Interconnection Customer's~~ IC's] cost responsibility for the actual cost of such facilities or upgrades, and (ii) the [~~Interconnection Customer's~~ IC's] previous aggregate payments to the [~~Distribution Company~~ utility] for such facilities or upgrades. If the [~~Interconnection Customer's~~ IC's] cost responsibility exceeds its previous aggregate payments, the [~~Distribution Company~~ utility] shall invoice the [~~Interconnection Customer~~ IC] for the amount due and the [~~Interconnection Customer~~ IC] shall make payment to the [~~Distribution Company~~ utility] within 30 calendar days. If the [~~Interconnection Customer's~~ IC's] previous aggregate payments exceed its cost responsibility under this Agreement, the [~~Distribution Company~~ utility] shall refund to the [~~Interconnection Customer~~ IC] an amount equal to the difference within 30 calendar days of the final accounting report.

6.2 Milestones

The Parties shall agree on milestones for which each Party is responsible and [~~list them~~ such milestone shall be listed] in Attachment 4 of this Agreement. A Party's [milestones] obligations under this provision may be [~~extended~~ modified] by agreement. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure [~~Event~~ event], it shall immediately [(i)] notify the other Party of the reason(s) for not meeting the milestone [**,**] and [~~(i)~~ (ii)] propose the earliest reasonable alternate date by which it can attain this and future milestones, and [~~(ii) requesting~~ (iii) request] appropriate amendments to Attachment 4. The Party affected by the failure to meet a milestone shall not [~~unreasonably~~] withhold agreement to such an amendment unless it will suffer [~~significant~~] uncompensated economic or operational harm from the delay, attainment of the same milestone has previously been delayed, or it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

6.3 Financial security arrangements

At least 20 business days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of the [~~Distribution Company's interconnection~~ attachment] facilities and [distribution] upgrades, the Interconnection Customer shall provide the [~~Distribution Company~~ utility], at the [~~Interconnection Customer's~~ IC's] option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to the [~~Distribution Company~~ utility] and is consistent with the Uniform Commercial Code of the jurisdiction where the point of interconnection is located. Such security for payment shall be in an amount sufficient to cover the costs for [~~constructing,~~] designing, procuring, [~~and~~] installing [, and constructing] the applicable portion of the [~~Distribution Company's interconnection~~ attachment] facilities and [distribution] upgrades and shall be reduced on a dollar-for-dollar basis for payments made to the [~~Distribution Company~~ utility] under this Agreement during its term. In addition:

6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the [~~Distribution Company~~ utility], and contain terms and conditions that guarantee payment of any amount that may be due from the [~~Interconnection Customer~~ IC], up to an agreed-to maximum amount.

6.3.2 The letter of credit or surety bond must be issued by a financial institution or insured reasonably acceptable to the [~~Distribution Company~~ utility] and must specify a reasonable expiration date.

Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default

7.1 Assignment

This Agreement may be assigned by either Party upon 15 business days prior written notice and opportunity to object by the other Party; provided that:

7.1.1 Either Party may assign this Agreement without the consent of the other Party to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement;

7.1.2 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the [~~Distribution Company~~ utility], for collateral security purposes to aid in providing financing for the [~~small generating facility~~ SGF], provided that the [~~Interconnection Customer~~ IC] will promptly notify the [~~Distribution Company~~ utility] of any such assignment.

7.1.3 Any attempted assignment that violates this article is void and ineffective.

Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same financial, credit, and insurance obligations as the [~~Interconnection Customer~~ IC]. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

7.2 Limitation of liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except as authorized by this Agreement.

7.3 Indemnity

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in article 7.2.

7.3.2 The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.3.3 If an indemnified [~~person~~ Party] is entitled to indemnification under this article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this article, to assume the defense of such claim, such indemnified person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

7.3.4 If an indemnifying [~~party~~ Party] is obligated to indemnify and hold any indemnified person harmless under this article, the amount owing to the indemnified person shall be the amount of such indemnified person's actual loss, net of any insurance or other recovery.

7.3.5 Promptly after receipt by an indemnified person of any claim or notice of the commencement of any action or administrative or legal proceeding or small generator investigation as to which the indemnity provided for in this article may apply, the indemnified person shall notify the indemnifying [~~party~~ Party] of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying party.

7.4 Consequential damages

Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

7.5 Force Majeure

7.5.1 As used in this article, a Force Majeure [~~Event~~ event] means "any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure [~~Event~~ event] does not include an act of negligence or intentional wrongdoing."

7.5.2 If a Force Majeure [~~Event~~ event] prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure [~~Event~~ event] (["] Affected Party ["]) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure [~~Event~~ event]. The notification must specify in reasonable detail the circumstances of the Force Majeure [~~Event~~ event], its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure [~~Event~~ event] until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure [~~Event~~ event] cannot be mitigated by the use of reasonable efforts. The Affected Party will use reasonable efforts to resume its performance as soon as possible.

7.6 Default

7.6.1 No default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure [~~Event~~ event] as defined in this Small Generator Interconnection Agreement or the result of an act or omission of the other Party. Upon a default, the [~~nondefaulting~~ Nondefaulting] Party shall give written notice of such default to the [~~defaulting~~ Defaulting] Party. Except as provided in article 7.6.2, the [~~defaulting~~ Defaulting] Party shall have 60 calendar days from receipt of the default notice within which to cure the default; however, if the default is not capable of cure within 60 calendar days, the [~~defaulting~~ Defaulting] Party shall commence the cure within 20 calendar days after notice and continuously and diligently complete the cure within six months from receipt of the default notice; and, if cured within such time, the default specified in such notice shall cease to exist.

7.6.2 If a default is not cured as provided in this article, or if a default is not capable of being cured within the period provided for herein, the [~~nondefaulting~~ Nondefaulting] Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the [~~defaulting~~ Defaulting] Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

Article 8. Insurance

8.1 The Interconnection Customer shall, at its own expense, maintain in force general liability insurance without any exclusion for liabilities related to the interconnection undertaken pursuant to this Agreement. The amount of such insurance shall be [~~sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made~~ in accordance with 20VAC5-314-160 of the Commission's Regulations Governing the Interconnection of Small Electrical Generators]. The [~~Interconnection Customer~~ IC] shall obtain additional insurance only if necessary as a function of owning and operating a generating facility. Insurance shall be obtained from an insurance provider authorized to do business in the State [~~where the interconnection is located~~ of Virginia]. Certification that such insurance is in effect shall be provided upon request of the [~~Distribution Company~~ utility], except that the [~~Interconnection Customer~~ IC] shall show proof of insurance to the [~~Distribution Company~~ utility] no later than 10 business days prior to the anticipated commercial operation date [of the SGF]. An [~~Interconnection Customer~~ IC] of sufficient creditworthiness may propose to self-insure for such liabilities, and such a proposal shall not be unreasonably rejected.

8.2 The [~~Distribution Company~~ utility] agrees to maintain general liability insurance or self insurance consistent with the [~~Distribution Company's~~ utility's] commercial practice. Such insurance or self-insurance shall not exclude coverage for the [~~Distribution Company's~~ utility's] liabilities undertaken pursuant to this Agreement.

8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 9. Confidentiality

9.1 Confidential information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.

9.2 Confidential information does not include information previously in the public domain, required to be publicly submitted or divulged by governmental authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving confidential information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.

9.2.1 Each Party shall employ at least the same standard of care to protect confidential information obtained from the other Party as it employs to protect its own confidential information.

9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of confidential information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

[9.3 Notwithstanding anything in this Agreement to the contrary, if the Virginia State Corporation Commission ("Commission"), during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence, the Party shall provide the requested information to the Commission, within the time provided for in the request for information. In providing the information to the Commission, the Party may request that the information be treated as confidential and nonpublic by the Commission and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the confidential information to the Commission.]

Article 10. Disputes

10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this article.

10.2 In the event of a dispute, either Party shall provide the other Party with a written Notice of Dispute. Such Notice shall describe in detail the nature of the dispute. [The Parties shall make a good faith effort to resolve the dispute informally within 10 business days.]

10.3 If the dispute has not been resolved within [~~two~~ 10] business days after receipt of the Notice, either Party may [~~contact~~ seek resolution assistance from] the [Commission's] Division of Energy Regulation [~~for assistance in resolving the dispute~~ where the matter will be handled as an informal complaint. If that process is unsatisfactory, either Party may petition the Commission to handle the dispute as a formal complaint].

[Alternatively, either Party may seek resolution through the assistance of a dispute resolution service. The dispute resolution service will assist the Parties in either resolving the dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the Parties in resolving their dispute. Each Party agrees to conduct all negotiations in good faith and will be responsible for ½ of any costs paid to neutral third parties.]

10.4 [~~Each Party agrees to conduct all negotiations in good faith and will be responsible for one half of any costs paid to neutral third parties~~ If attempted dispute resolutions fail to satisfy one or both of the Parties, then either Party may exercise whatever rights and remedies it may have in equity or law consistent with the terms of this Agreement].

[~~10.5 If neither Party elects to seek assistance from the State Corporation Commission's Division of Energy Regulation, or if the attempted dispute resolution fails, then either Party may exercise whatever rights and remedies it may have in equity or law consistent with the terms of this Agreement.~~]

Article 11. Taxes

11.1 The Parties agree to follow all applicable tax laws and regulations

11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the [~~Distribution Company's~~ utility's] tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

Article 12. Miscellaneous

12.1 Governing [~~Law, Regulatory Authority, and Rules~~ law, regulatory authority, and rules]

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the [~~state~~ State of] Virginia without regard to its conflicts of law principles. This Agreement is subject to all applicable laws and regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority.

12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

12.3 No [~~Third Party Beneficiaries~~ third-party beneficiaries]

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than

the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

12.4 Waiver

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed [to be] a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, [or] duty of this Agreement. Termination or default of this Agreement for any reason by [the] Interconnection Customer shall not constitute a waiver of the [~~Interconnection Customer's~~ IC's] legal rights to obtain an interconnection from the [~~Distribution Company~~ utility]. Any waiver of this Agreement shall, if requested, be provided in writing.

12.5 Entire Agreement

This Agreement, including all Attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

12.6 Multiple [~~Counterparts~~ counterparts]

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No [~~Partnership~~ partnership]

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (i) such portion or provision shall be deemed separate and independent, (ii) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (iii) the remainder of this Agreement shall remain in full force and effect.

12.9 Environmental [~~Releases~~ releases]

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the [~~small generating facility or~~ Small Generating Facility,] the [customer's] interconnection facilities, [or attachment facilities,] each of which may reasonably be expected to affect the other Party. The notifying Party shall (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

12.10 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; however, each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.10.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; however, in no event shall the [~~Distribution Company~~ utility] be liable for the actions or inactions of the [~~Interconnection Customer~~ IC] or its subcontractors with respect to obligations of the [~~Interconnection Customer~~ IC] under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.10.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

12.11 Reservation of [~~Rights~~ rights]

The [~~Distribution Company~~ utility] shall have the right to make a unilateral filing with the Commission to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation.

Article 13. Notices

13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national [~~currier~~ courier] service, or sent by first class mail, postage prepaid, to the person specified below:

If to the Interconnection Customer:

Interconnection Customer:

Attention:

Address:

[~~City:~~
~~State:~~ ~~Zip:~~

City, State,
Zip:]

Phone: Fax:

If to the [~~Distribution Company~~ Utility]:

[~~Distribution Company~~ Utility]:

Attention:

Address:

[~~City:~~
~~State:~~ ~~Zip:~~

City, State,
Zip:]

Phone: Fax:

13.2 Billing and [~~Payment~~ payment]

Billings and payments shall be sent to the addresses set out below:

If to the Interconnection Customer:

Interconnection Customer:

Attention:

Address:

[~~City:~~
~~State:~~ ~~Zip:~~

City, State,
Zip:]

If to the [~~Distribution Company~~ Utility]:

[~~Distribution Company~~ Utility]:

Attention:

Address:

[~~City:~~
~~State:~~ ~~Zip:~~

City, State,
Zip:]

13.3 Alternative [~~Forms~~ forms] of [~~Notice~~ notice]

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and email addresses set out below:

If to the Interconnection Customer:

Interconnection Customer:

Attention:

Address:

[~~City:~~
~~State:~~ ~~Zip:~~

City, State,
Zip:]

Phone: Fax:

If to the [~~Distribution Company~~ Utility]:

[~~Distribution Company~~ Utility]:

Attention:

Address:

[~~City:~~
~~State:~~ ~~Zip:~~

City, State,
Zip:]

Phone: Fax:

13.4 Designated [~~Operating Representative~~ operating representative]

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer:

Attention:

Address:

[~~City:~~
~~State: Zip:~~

City, State,
Zip:]

Phone: Fax:

[~~Distribution Company's~~ Utility's] Operating Representative:

[~~Distribution Company~~ Utility]:

Attention:

Address:

[~~City:~~
~~State: Zip:~~

City, State,
Zip:]

Phone: Fax:

13.5 Changes to the [~~Notice Information~~ notice information]

Either Party may change this information by giving five business days written notice prior to the effective date of the change.

Article 14. Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the [~~Distribution Company~~ Utility]

Name:

Title:

Date:

For the Interconnection Customer

Name:

Title:

Date:

Attachment 1 to

Schedule [~~5~~ 6]

Glossary of Terms

["] Affected system [~~An~~ " means an] electric [utility] system other than [that of] the [~~Distribution Company's transmission system~~ utility] that may be affected by the proposed interconnection.

["Affected system operator" means an entity that operates an affected system or, if the affected system is under the operational control of an independent system operator or a Regional Transmission Entity, such independent entity.]

["] Applicable laws and regulations [~~All~~ " means all] duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any governmental authority.

["Attachment facilities" means the facilities and equipment owned, operated, and maintained by the utility that are built new in order to physically connect the customer's interconnection facilities to the utility system. Attachment facilities shall not include distribution upgrades or previously existing distribution and transmission facilities.]

["] Business Day [~~—~~ " means] Monday through Friday, excluding federal holidays.

["Certified" has the meaning ascribed to it in Schedule 2 of Chapter 314 (20VAC5-314-10 et seq.) of the Virginia Administrative Code.

"Customer's interconnection facilities" means all the facilities and equipment owned, operated and maintained by the Interconnection Customer, between the Small Generating

Facility and the point of interconnection necessary to physically and electrically interconnect the Small Generating Facility to the utility system.

"Commission" means the Virginia State Corporation Commission.]

["] Default [~~— The~~ " means the] failure of a breaching Party to cure its breach under the Small Generator Interconnection Agreement.

[~~Distribution Company — The Utility that owns and/or operates the Distribution System located in Virginia to which the small generation facility proposes to interconnect its small generating facility.~~]

["] Distribution system [~~— The Distribution Company's~~ " means the utility's] facilities and equipment [~~used to transmit~~ generally delivering] electricity to ultimate [~~usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission systems which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas~~ customers from substations supplied by higher voltages (usually at transmission level). For purposes of this Agreement, all portions of the utility's transmission system regulated by the Commission for which interconnections are not within Federal Energy Regulatory Commission jurisdiction are considered also to be subject to Commission regulations.]

["] Distribution upgrades [~~— The~~ " means the] additions, modifications, and upgrades to the [~~Distribution Company's~~ utility's] distribution system at or beyond the point of interconnection [necessary] to [~~facilitate~~ abate problems on the utility's distribution system caused by the] interconnection of the [~~small generating facility and render the transmission service necessary to effect the Interconnection Customer's wholesale sale of electricity in interstate commerce~~ Small Generating Facility]. Distribution upgrades do not include [customer's] interconnection facilities [or attachment facilities].

["Energy service provider" means any entity supplying electric energy service to the Interconnection Customer.

"Facilities study" has the meaning ascribed to it in the commission's regulations governing the interconnection of small generating facilities at 20VAC5-314-70 F.

"Feasibility study" has the meaning ascribed to it in the commission's regulations governing the interconnection of small generating facilities at 20VAC5-314-70 D.

"FERC" means the Federal Energy Regulatory Commission.]

["] Good [~~Distribution Company~~ Utility] Practice [~~— Any~~ " means any] of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good [~~Distribution Company~~ Utility] Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

["] Governmental authority [~~— Any~~ " means any] federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided that such term does not include the Interconnection Customer, the [~~interconnection provider, or any Affiliate thereof~~ utility, or a utility affiliate].

["] Interconnection Customer [~~— Any~~ " or "IC" means any] entity [~~, including the Distribution Company, the transmission owner or any of the affiliates or subsidiaries of either, that proposes to interconnect its small generating facility with the Distribution Company's transmission~~ proposing to interconnect a new Small Generating Facility with the utility] system.

[~~Interconnection facilities — The Distribution Company's interconnection facilities and the Interconnection Customer's interconnection facilities. Collectively, interconnection facilities include all facilities and equipment between the small generating facility and the point of interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the small generating facility to the Distribution Company's transmission system. Interconnection facilities are sole use facilities and shall not include distribution upgrades or system upgrades.~~

"] Interconnection request [~~— The Interconnection Customer's~~ " means the IC's] request, in accordance with the tariff, to interconnect a new [~~small generating facility~~ Small General Facility], or to increase the capacity of, or make a material modification to the operating characteristics of, an existing [~~small generating facility~~ Small Generating Facility] that is interconnected with the [~~Distribution Company's~~ utility] system.

["Interconnection studies" means the studies conducted by the utility, or a third party agreed to by the utility and the Interconnection Customer, in order to determine the interaction of the Small Generating Facility with the utility system and the affected systems in order to specify any modifications to the Small Generating Facility or the electric systems studied to ensure safe and reliable operation of the Small Generating Facility in parallel with the utility system.

"] Material modification [~~—A~~ " means a] modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

[~~System upgrades – Additions, modifications, and upgrades to the Distribution Company's distribution and transmission system required at or beyond the point at which the small generating facility interconnects with the system to accommodate the interconnection of the small generating facility with the Distribution Company's transmission system.~~

"] Operating requirements [~~— Any~~ " means any] operating and technical requirements that may be applicable due to [~~Regional Transmission Organization, Independent System Operator~~ regional transmission entity, independent system operator], control area, or the [~~Distribution Company's~~ utility's] requirements, including those set forth in the Small Generator Interconnection Agreement.

["] Party ["] or ["] Parties ["] [~~— The Distribution Company~~ means the utility], [the] Interconnection Customer or [~~any combination of the above~~ both].

["] Point of interconnection [~~— The~~ " means the] point where the [customer's] interconnection facilities connect [~~with~~ to] the [~~Distribution Company's transmission~~ utility] system.

[~~Reasonable efforts – With respect to an action required to be attempted or taken by a Party under the Small Generator Interconnection Agreement, efforts that are timely and consistent with Good Distribution Company Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.~~

"Regional Transmission Entity" or "RTE" shall refer to an entity having the management and control of a utility's transmission system as further set forth in § 56-579 of the Code of Virginia.

"] Small Generating Facility [~~— The~~ " or "generator" or "SGF" means the] Interconnection Customer's [~~device~~ equipment] for the production of electricity identified in the Interconnection Request [~~, but shall not include the Interconnection Customer's interconnection facilities~~].

["Small Generator Interconnection Agreement" or "SGIA" means the agreement between the utility and the Interconnection Customer as set forth in Schedule 6 of 20VAC5-314-170 of the Commission's regulations governing interconnection of small electrical generators.

"Supplemental review" has the meaning ascribed to it in the Commission's regulations governing the interconnection of small generating facilities at 20VAC5-314-70 E.

"System" or "utility system" means the distribution and transmission facilities owned, controlled, or operated by the utility that are used to deliver electricity.

"System impact study" has the meaning ascribed to it in the Commission's regulations governing the interconnection of small generating facilities at 20VAC5-314-70 E.]

["] Tariff [~~— The~~ " means the] rates, terms and conditions filed by the utility with the [~~State Corporation~~] Commission for the purpose of providing [~~commission-regulated~~ Commission-regulated] electric service to retail customers.

[~~Upgrades – The required additions and modifications to the Distribution Company's distribution or transmission system at or beyond the point of interconnection. Upgrades do not include interconnection facilities.~~

"Transmission system" means the utility's facilities and equipment delivering electric energy to the distribution system, such facilities usually being operated at voltages above the utility's typical distribution system voltages.

"Utility" means the public utility company subject to regulation by the Commission pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia with regard to rates and/or service quality to which the Interconnection Customer proposes to interconnect a Small Generating Facility.]

Attachment 2 to

Schedule [~~5~~ 6]

Description and Costs of the Small Generating Facility, [Customer's] Interconnection Facilities, [Attachment Facilities] and Metering Equipment

[~~Equipment, including the small generating facility, interconnection facilities, and metering equipment shall be itemized and identified as being~~ The following shall be provided in this exhibit:

1. An itemization of the major equipment components] owned by the Interconnection Customer [~~or~~ and] the [~~Distribution Company. The Distribution Company will provide a best estimate itemized cost, including overheads, of its interconnection facilities and metering equipment, and a best estimate itemized cost of the annual operation and maintenance expenses associated with its interconnection facilities and metering equipment~~ utility, including components of the Small Generating Facility, the customer's interconnection facilities, attachment facilities, and metering equipment. Such itemization shall identify the owner of each item listed.

2. The utility's estimated itemized cost of its attachment facilities and its metering equipment.

3. The utility's estimated cost of its annual operation and maintenance expenses associated with attachment facilities and metering equipment to be charged to the Interconnection Customer].

Attachment 3 to

Schedule [~~5~~ 6]

[[~~Diagram to be provided by applicant~~]]

One-line Diagram Depicting the Small Generating Facility, [Customer's] Interconnection Facilities, [Attachment Facilities,] Metering Equipment, and [Distribution] Upgrades

[(Diagram and description to be provided by Interconnection Customer)]

Attachment 4 to

Schedule [~~5~~ 6]

Milestones

In-Service Date: _____

Critical milestones and responsibility as agreed to by the Parties:

Milestone/Date	**Responsible Party**
(1) _____	_____
(2) _____	_____
(3) _____	_____
(4) _____	_____
(5) _____	_____
(6) _____	_____
(7) _____	_____
(8) _____	_____
(9) _____	_____
(10) _____	_____

Agreed to by:

For the [~~Distribution Company~~ Utility]
_____ Date _____

For the Transmission Owner (If Applicable) _____
Date _____

For the Interconnection Customer _____
Date _____

Attachment 5 to

Schedule [~~5~~ 6]

Additional Operating Requirements for the [~~Distribution Company's~~ Utility] System and Affected Systems Needed to Support the Interconnection Customer's Needs

The [~~Distribution Company~~ utility] shall [~~also~~] provide requirements that must be met by the Interconnection Customer prior to initiating parallel operation with the [~~Distribution Company's~~ utility] system.

Attachment 6 to

Schedule [~~5~~ 6]

[~~Distribution Company's~~ Utility's] Description of its [Distribution and Transmission] Upgrades [~~And Best~~ and] Estimate of Upgrade Costs

The [~~Distribution Company shall describe upgrades and provide an itemized estimate of the cost, including overheads, of the upgrades and annual operation and maintenance expenses associated with such upgrades. The Distribution Company shall functionalize upgrade costs and annual expenses as either transmission or distribution related.~~ utility shall provide the following in this attachment:

1. An itemized list of the upgrades required to be constructed by the utility prior to interconnection of the Small Generating Facility, with transmission and distribution related upgrades shown separately.

2. An estimate of the cost of each item listed pursuant to item 1.

3. An estimate of annual operation and maintenance expenses associated with such upgrades that are to be charged to the Interconnection Customer, shown separately for transmission and distribution related items.]

Attestation

VA.R. Doc. No. R08-1147; Filed December 1, 2008, 10:48 a.m.

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TITLE 22. SOCIAL SERVICES

DEPARTMENT OF REHABILITATIVE SERVICES

Proposed Regulation

Title of Regulation: **22VAC30-50. Policies and Procedures for Administering the Commonwealth Neurotrauma Initiative Trust Fund (amending 22VAC30-50-10, 22VAC30-50-20, 22VAC30-50-30, 22VAC30-50-50 through 22VAC30-50-110; adding 22VAC30-50-120).**

Statutory Authority: §§ 51.5-12.4 and 51.5-14 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 February 22, 2009.

Agency Contact: Vanessa S. Rakestraw, Policy Analyst, Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7696, TTY (800) 464-9950, or email vanessa.rakestraw@drs.virginia.gov.

Basis: Section 51.5-12.4 of the Code of Virginia requires the Commissioner of Rehabilitative Services to promulgate regulations establishing procedures and policies for soliciting and receiving grant applications and criteria for reviewing and ranking such applications. Section 51.5-14 grants general authority to the commissioner to promulgate regulations necessary to carry out the laws of the Commonwealth administered by the department.

Purpose: The regulations to administer the Commonwealth Neurotrauma Initiative (CNI) Trust Fund are essential to the integrity of the program. The CNI Trust Fund is designed to promote medical research into traumatic brain and spinal cord injuries and to provide treatment and care for individuals who have sustained such injuries. Moneys in the trust fund are to be used solely to support grants for Virginia-based researchers, organizations, and institutions that either conduct research into the mechanism of neurotrauma or that provide medical or rehabilitative treatment and care for individuals with such injuries. The amendment to this regulation will clarify that the fund is to be used for innovative research and treatment programs and is not to be used as a source for long-term funding. The amended regulation will also provide that the commissioner can reallocate a limited amount of unexpended balances to fund new research in the area of neurotrauma.

Substance: Most sections in this regulation contain only minor technical changes. The following sections contain substantive changes:

22VAC30-50-30 - Title of catchline has been changed to "Disbursement of funds" to more adequately describe this section. A phrase that funds are to be used for the development of innovative, model programs and services for individuals with neurotrauma has been added. Wording has been changed to ensure that "person first" language is used in the regulations.

22VAC30-50-60 - Section has been amended deleting the timeline for release of a request for proposals to allow more leniency to applicants or the advisory board in the deadline due date.

22VAC30-50-70 - Title of catchline has been streamlined from "Appointment of grant reviewers and technical advisors" to "Grant reviewers and technical advisors." The restriction that the chairperson of the advisory board of the Commonwealth Neurotrauma Initiative Trust Fund not be able to vote on applications for funds when reviewers and advisors sit as a committee has been removed.

22VAC30-50-80 - Section has been amended to stress that grant funds for rehabilitative services are to be used for the development of innovative, community-based rehabilitation programs and services and that when grant funds are not to be used for the long-term funding of research projects or service programs.

22VAC30-50-90 - Review of applications; stated priorities. This section has been amended to state that the advisory board may fund applicants who seek funds for research projects relevant to rehabilitative as well as medical inquiry. Additionally the detail under Option B was modified in an attempt to make submission requirements clear.

22VAC30-50-100 - Reviewing and ranking grant applications. The inclusion of an itemized list of weighted criteria with point values assigned to each criterion has been changed to an unweighted list of criteria, with specific point values to be assigned in the individual requests for proposals.

22VAC30-50-110 - Amount of grant awards; duration and availability of funding. A statement was added that provides that the selection of successful applications will be based on available moneys in the fund, the review and ranking of the applications by the advisory board, as well as information from grant reviewers or technical advisors appointed by the board.

22VAC30-50-120 - Unexpended funds. This new section has been added as the result of a 2005 budget amendment, which states that the commissioner may reallocate up to $500,000 from unexpended balances in the Commonwealth Neurotrauma Initiative Trust Fund to fund new grant awards for research on traumatic brain and spinal cord injuries.

Issues: The proposed regulatory action will provide citizens, applicants, consumers of services and their advocates with information on the Commonwealth Neurotrauma Initiative Trust Fund. The primary advantage of this regulatory action is that the integrity of the Commonwealth Neurotrauma

Initiative Trust Fund will be maintained. This action provides an objective means of reviewing and ranking applications to the fund while allowing for flexibility in distributing the funds during times of economic change. No disadvantages to the public or the Commonwealth have been identified.

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

Summary of the Proposed Amendments to Regulation. The proposed changes will remove the assigned weights to the criteria that are used in reviewing and ranking grant applications, incorporate a legislative change occurred in 2004, and make numerous editorial and formatting changes.

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

Estimated Economic Impact. These regulations set out the rules for the Commonwealth Neurotrauma Initiative Trust Fund (CNI). The CNI Trust Fund is a non-reverting fund established to provide grants for up to three years to recipients who engage in research pertaining to brain and spinal cord injuries or recipients who provide community services to individuals who have suffered brain or spinal cord injuries. The fund receives moneys from the Virginia Department of Motor Vehicles from persons who apply for reinstatement of their drivers' licenses after being convicted of certain specified dangerous driving offenses.[1]

One of the proposed changes will remove the assigned weights to the criteria that are used in reviewing and ranking grant applications. This change is expected to allow evaluators to place greater emphasis on criteria that are most relevant for a specific research or community service project and give them greater discretion on ranking grant applications. As the importance of each criterion would be different for each specific project, this change is expected to produce net benefits.

Another proposed change will incorporate in the regulations a budget provision enacted during the 2004 General Assembly session stating that the Department of Rehabilitative Services Commissioner may reallocate up to $500,000 from unexpended balances in the CNI Trust Fund to fund new grand awards. Also, proposed changes include numerous changes that are technical and/or clarifying in nature such as re-arranging sections and updating current language. None of these changes are expected to create any significant change in practice. Thus, no significant costs or benefits are expected from these changes other than improving the clarity and consistency of the regulations.

Businesses and Entities Affected. These regulations primarily affect grant applicants. In 2007, there were seven applications from the University of Virginia, thirteen from the Virginia Commonwealth University, and one from another entity.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. No significant impact on employment is expected.

Effects on the Use and Value of Private Property. No significant impact on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. No significant costs and other effects on small businesses are expected.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Real Estate Development Costs. No adverse impact on real estate development costs is expected.

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

[1] These offenses include: DUI-related offenses, hit-and-run, reckless driving, and failure to comply with conditions imposed upon license probation for driving offenses.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Rehabilitative Services concurs with the economic impact analysis completed by the Department of Planning and Budget on July 1, 2008.

Summary:

The proposed amendments (i) clarify that the Commonwealth Neurotrauma Initiative Trust Fund is to be used for innovative research and treatment programs and is not to be used as a source for long-term funding; (ii) remove the assigned weights to the criteria that are used in reviewing and ranking grant applications; (iii) provide that the commissioner can reallocate a limited amount of unexpended balances to fund new research in the area of neurotrauma; and (iv) make clarification and editorial changes.

Part I
Definitions and General Information

22VAC30-50-10. Definitions.

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

"Advisory board" means the Commonwealth Neurotrauma Initiative Advisory Board.

"Fund" means the Commonwealth Neurotrauma Initiative Trust Fund.

"Neurotrauma" means an injury to the central nervous system, i.e., a traumatic spinal cord or brain injury, which results in loss of physical functions, cognitive functions or both.

"RFP" or "request" means a request for proposals ~~published~~ issued by the advisory board seeking applications for grant moneys in the fund.

22VAC30-50-20. Statement of general policy.

The Commonwealth of Virginia has recognized the need to prevent traumatic spinal cord and brain injuries and is committed to ~~improve~~ improving the treatment and care of Virginians with traumatic spinal cord and brain injuries. By creating the fund and authorizing the advisory board to administer the fund, the Commonwealth makes grant funds available to Virginia-based organizations, institutions and researchers ~~funds~~ to address these needs. The advisory board ~~seeks to administer~~ administers the fund ~~in order~~ to carry out the intent of the law in accordance with its authority.

22VAC30-50-30. ~~Purpose of chapter~~ Disbursement of funds.

A. This chapter serves to (i) establish policies and procedures for soliciting and receiving applications for grants from the fund, (ii) establish criteria for reviewing and ranking such applications, and (iii) establish procedures for distributing moneys in the fund, which shall be used solely to provide grants to Virginia-based organizations, institutions, and researchers.

B. Forty-seven and one-half percent of the moneys shall be allocated for research on the mechanisms and treatment of neurotrauma; 47-1/2% of the moneys shall be allocated for rehabilitative services, i.e., the development of innovative, model community-based rehabilitative programs and services for ~~injured~~ individuals with neurotrauma; and 5.0% of the moneys shall be allocated for the Department of Rehabilitative Services' costs for administering and staffing the Commonwealth Neurotrauma Initiative ~~Advisory Board~~ Trust Fund and advisory board. ~~Those applications for grants to conduct research on the mechanisms and treatment of neurotrauma shall be identified as Option A applications. Those applications for grants to provide rehabilitative services shall be identified as Option B applications.~~

22VAC30-50-50. Application of ~~an~~ exemption to the Virginia Freedom of Information Act.

Pursuant to a provision of the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia, records submitted to the advisory board as a grant application, or accompanying a grant application, ~~to the advisory board~~ pursuant to the law and this chapter are excluded from the requirement of open inspection to the extent that they contain medical or mental records or other data identifying individual patients, or proprietary business or research-related information produced or collected by an applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues~~,~~. This exemption shall apply when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant. The advisory board intends to rely upon this exemption in order to encourage the submission of applications.

Part II
Soliciting and Reviewing Applications

22VAC30-50-60. Requests for proposals.

The advisory board will solicit applications for grants of moneys from the fund by ~~publishing~~ issuing requests for proposals from time to time. Each application for a grant must be received in response to an actual request for ~~proposals~~ a proposal and by a deadline specified in the request~~, which will be no fewer than 60 days following publication of the request~~.

22VAC30-50-70. ~~Appointment of grant~~ Grant reviewers and technical advisors.

The advisory board may choose, at any time, to appoint grant reviewers or other technical advisors, or both, ~~at any time~~ to assist in reviewing and ranking applications. Such reviewers and advisors may represent medical researchers, medical practitioners, community-based service providers, consumers, ~~or~~ advocates for consumers, or others deemed appropriate by the advisory board for this purpose. Reviewers and advisors shall be appointed so as to provide equal

representation from Virginia's three medical schools. Reviewers and advisors shall be selected so as to avoid any conflict of interests or the appearance thereof, and ~~may be chosen because of their~~ the advisory board may choose reviewers and advisors residing or working outside Virginia ~~in order~~ to ensure impartiality. Whenever reviewers or advisors sit as a committee, the chairman of the advisory board or his designee shall serve as chairman of the committee but shall not vote on individual applications.

22VAC30-50-80. Specification of Option A or B.

Each application shall clearly state a purpose to seek funds ~~to carry out a program consistent with Option A or Option B.~~ for projects to conduct research on the mechanisms and treatment of neurotrauma, which shall be referred to as "Option A," or to develop innovative, model community-based rehabilitative programs and services for individuals with neurotrauma, which shall be referred to as "Option B." Option A applications shall state and demonstrate a clear intention of researching the mechanisms of neurotrauma or the treatment of neurotrauma, or both. Option B applications shall state and demonstrate a clear intention to provide innovative, model community-based rehabilitative services by developing, expanding or improving community-based programs and ~~facilities serving and treating individuals who have experienced~~ services for people with traumatic brain injury or traumatic spinal cord injury, or both, and expanding opportunities for such individuals to become as independent and physically and functionally capable as possible. Neither Option A nor Option B grants are intended for long-term funding of research projects or service programs.

22VAC30-50-90. ~~Review of applications; stated priorities.~~ Submission of applications.

In reviewing applications submitted for grant awards, whether Option A or Option B, the advisory board will ~~give priority to~~ accept applications that:

1. Present a convincing and persuasive discussion of how the proposed project will carry out its intention as specified in accordance with 22VAC30-50-80, and describe in as much detail as possible its anticipated effectiveness in carrying out its intention.

~~2. Include a system for measuring outcomes and documenting project impact and effectiveness, including any anticipated long-term effect of the proposed project.~~

~~3. Provide the means for consumer involvement in the design, implementation and evaluation of the project as relevant to the intention of the proposed project;~~

~~4. Identify sources of funds, if known, and fundraising strategies to be used in sustaining the proposed project following termination of a grant award as relevant to the intention of the proposed project;~~

~~5.~~ 2. Comply fully with ~~additional~~ informational and administrative requirements stated in the specific RFP to which ~~applications~~ applicants are responding~~;~~.

~~6.~~ 3. In the case of an Option A application:

a. Discuss the relevance of the proposed project to an identified field of medical or rehabilitative inquiry,

b. Demonstrate the anticipated benefit of the proposed project in terms of expanding knowledge and understanding of neurotrauma,

c. Discuss any innovation or breakthrough the project seeks to promote, specifying outcome measures where possible for each of the preceding enumerated items in this subdivision, and

d. Describe efforts to ensure that the proposed project ~~will~~ does not duplicate ~~completed~~ previous or ongoing research; and

~~7.~~ 4. In the case of an Option B application:

a. ~~Describe and demonstrate the need for the~~ Discuss the relevance of the proposed project to an identified need for innovative, model community-based rehabilitative services in terms of the absence of alternative programs, services, and resources ~~and facilities~~ available to the intended individuals and community~~;~~.

b. ~~Demonstrate the avoidance of duplication of~~ Describe efforts to ensure that the proposed project does not duplicate programs, services, or resources already available; and

c. State and emphasize a commitment to collaborative community planning involving consumer groups, service providers, employers, relevant state and local agencies, and other funding sources, as available or anticipated to become available~~, and relevant state and local agencies~~.

Part III
Specific Project Consideration and Application Criteria, Selection of Successful Applications and Amount and Announcement of Awards

22VAC30-50-100. ~~Ranking and reviewing~~ Reviewing and ranking grant applications.

A. The advisory board will distinguish the class of Option A applications from the class of Option B applications when soliciting, ~~ranking and~~ reviewing and ranking grant applications. Applications will be considered and ranked only among ~~only~~ other applications ~~with the stated intention to address the same option~~ submitted under the same stated option, either Option A or Option B. Applications initially deemed effective in ~~serving~~ meeting the purpose of ~~either option~~ a solicitation and to have substantially addressed the general considerations stated in Part II (22VAC30-50-60 et seq.) of this chapter, as applicable, will be subsequently

~~ranked and~~ reviewed and ranked according to ~~their satisfaction of~~ the following criteria~~, which will be weighted as indicated~~:

1. The purpose and significance of the project~~—20 points~~;

2. The objectives and expected benefits of the project~~—20 points~~;

3. The design of the project~~, means of assessing outcomes, methods to be employed, and the level of detail and feasibility of an included action plan—25 points~~ to include (i) methods, activities, and a timeline for achieving project goals and objectives, and (ii) a system for measuring outcomes and documenting project impact, effectiveness, and any anticipated long-term effects;

4. ~~Detailed nature, completeness and feasibility of an included~~ A detailed budget~~—15 points~~ that is reasonable and appropriate for the scope of the project;

5. The identification of potential sources of funds and fundraising strategies to be used in sustaining the proposed project following termination of a grant award as relevant to the intention of the proposed project;

~~5.~~ 6. Demonstrated or anticipated capability of the existing or planned organizational structure~~—15 points~~;

7. The means for consumer involvement in the design, implementation, and evaluation of the project as feasible and relevant to the intention of the proposed project;

~~6.~~ 8. A commitment to include the participation of small, women-owned and minority businesses, as such are available and capable of participation~~—5 points~~.

B. When initially reviewing applications or subsequently ~~ranking and~~ reviewing and ranking applications, the advisory board may ask applicants to provide required information that is missing from the application or additional clarifying information relating to their applications and proposed projects. Failure to provide missing information or failure to provide additional information that is material and relevant may result in the rejection or lowered ranking of an application.

22VAC30-50-110. Amount of grant awards; duration and availability of funding.

A. After reviewing all applications, duly received, for either Option A or Option B, the advisory board will determine which proposed projects will be offered funding. The selection of successful applications will be made based on (i) availability of moneys in the fund ~~and~~, (ii) the ~~criteria listed in this chapter~~ review and ranking of the applications according to the criteria listed in this chapter, (iii) information from grant reviewers or technical advisors who the board may appoint to assist in evaluating applications, and (iv) the advisory board's assessment of those applications, which further the intentions and the purpose of the fund. ~~Subsequent discussions~~ Discussions and negotiations may be conducted between the advisory board and ~~successful~~ grant applicants in order to clarify any remaining issues relating to the proposed project.

B. In considering and determining the amount of a grant award and the duration of funding for a particular project, the advisory board will consider the requested amount, ~~need, and~~ the project design and justification. Actual grant awards will be made in amounts ranging from $5,000 to $150,000 per year for an anticipated ~~duration, i.e., a total anticipated~~ funding period~~,~~ of one to three years as described in the proposal. The award and duration of funding ~~for~~ of a project ~~of an~~ anticipated ~~duration exceeding~~ to exceed one year will be contingent upon (i) the availability of moneys in the fund, whether so stated at the time of the award or not, and (ii) the grantee's successful completion of timelines and of interim objectives and milestones as proposed and approved in the grant application, grant award, and contract documents.

~~C. The award of grants to successful applicants will be made public within 60 days of the advisory board's decision regarding all applications submitted in response to a request for proposals~~.

~~D.~~ C. In the event any timelines and interim objectives and milestones pertaining to a project are not completed to the satisfaction of the advisory board, the advisory board may act to withhold moneys not yet disbursed for such a project. In the event of a substantial decline in moneys in the fund, the advisory board will attempt to distribute moneys to projects of an anticipated duration greater than one year in a manner as fair and equitable as possible.

D. The award of grants to successful applicants will be made public within 60 days of the advisory board's decision regarding all applications submitted in response to a request for proposals.

22VAC30-50-120. Unexpended funds.

Notwithstanding any other law to the contrary, the Commissioner of the Department of Rehabilitative Services may reallocate up to $500,000 from unexpended balances in the Commonwealth Neurotrauma Initiative Trust Fund to fund new grant awards for research on traumatic brain and spinal cord injuries.

VA.R. Doc. No. R08-843; Filed November 25, 2008, 11:06 a.m.

STATE BOARD OF SOCIAL SERVICES

Fast-Track Regulation

Title of Regulation: **22VAC40-72. Standards for Licensed Assisted Living Facilities (amending 22VAC40-72-10, 22VAC40-72-50, 22VAC40-72-90, 22VAC40-72-100, 22VAC40-72-150, 22VAC40-72-210, 22VAC40-72-220, 22VAC40-72-230, 22VAC40-72-260, 22VAC40-72-290, 22VAC40-72-340, 22VAC40-72-390, 22VAC40-72-420, 22VAC40-72-430, 22VAC40-72-440, 22VAC40-72-630, 22VAC40-72-660, 22VAC40-72-670, 22VAC40-72-910, 22VAC40-72-920, 22VAC40-72-930, 22VAC40-72-950, 22VAC40-72-960, 22VAC40-72-970, 22VAC40-72-1010, 22VAC40-72-1120; adding 22VAC40-72-191, 22VAC40-72-201; repealing 22VAC40-72-30, 22VAC40-72-190, 22VAC40-72-200).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until January 21, 2009.

Effective Date: February 5, 2009.

Agency Contact: Judith McGreal, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7157, FAX (804) 726-7132, TTY (800) 828-1120, or email judith.mcgreal@dss.virginia.gov.

Basis: The following sections of the Code of Virginia are the sources of legal authority to promulgate the regulation: § 63.2-217 (mandatory) states that the board shall adopt regulations as may be necessary or desirable to carry out the purpose of Title 63.2; § 63.2-1732 (mandatory and discretionary) addresses the board's overall authority to promulgate regulation for assisted living facilities and specifies content areas to be included in the standards; § 63.2-1803 (mandatory and discretionary) relates to licensure of assisted living facility administrators; § 54.1-3041 (mandatory) addresses registration of medication aides by the Board of Nursing; and § 32.1-37 (mandatory) requires licensed facilities to report outbreaks of disease.

Purpose: The amended regulation is needed to coordinate the requirements for the licensure of administrators and the registration of medication aides with regulations promulgated by the Virginia Board of Long-Term Care Administrators and the Virginia Board of Nursing, respectively. This coordination will ensure that the different sets of regulations work together to protect the health, safety, and welfare of residents and to avoid confusing or conflicting requirements.

The amended regulation incorporates recent changes to the Code of Virginia. These amendments keep the regulations up to date and ensure that assisted living facilities do not inadvertently overlook changes to the Code of Virginia.

This regulatory action proposes changes based on other agency regulations, as well as changes for increased clarity and readability of standards. In addition, several technical adjustments are proposed. A well-written regulation promotes compliance, which leads to increased protection for residents of assisted living facilities.

Rationale for Using Fast-Track Process: The fast-track process is being used because this regulatory action is expected to be noncontroversial and there is a sense of urgency regarding the effective date of the proposed changes. The proposed regulation needs to be in effect on January 2, 2009, to coordinate with the dates by which administrators of facilities providing both residential and assisted living care must be licensed (January 2, 2009) and medications aides in all assisted living facilities must be registered (December 31, 2008).

This regulatory action is expected to be noncontroversial because the Assisted Living Facility Advisory Committee was involved in the proposed changes and is expected to agree with the revisions.

Substance: The proposed regulatory action revises the regulation in respect to dedicated hospice facilities, reporting outbreaks of disease, documentation of delegation of resident funds, licensure of administrators, provisions for acting administrators, administrator responsibilities, administrator training, shared administrators for smaller facilities, continuing education for medication aides, tuberculosis risk assessment, bed hold policy information, review and update of individualized service plans, medication reference materials, registration of medication aides, supervision of medication aides, administration of medications, retention of fire inspection reports, and items included in fire and emergency evacuation drill records.

Issues: The following issues were identified:

22VAC40-72-90. There should be more specific requirements for the reporting of outbreaks of disease in assisted living facilities. The proposed language is taken from the Code of Virginia. Procedures for reporting and plans for training staff and providers are being developed in a joint effort by the Department of Social Services (DSS) and the Department of Health and will be available to assisted living facilities as technical assistance.

22VAC40-72-210 and 22VAC40-72-660. Administrators who supervise registered medication aides should complete training required for medication aides, not the much less comprehensive course that is also available. DSS originally proposed that administrators be given the option of either course, but revised the proposed standards to require administrators to complete the more comprehensive registered medication aide training. This change will increase

the knowledge base of the administrators who supervise medication aides and, therefore, provide increased protection to residents for whom medication is administered. The course for registered medication aides will take more time to complete than the shorter course and may be more costly, depending upon the circumstances.

22VAC40-72-201. Because licensed administrators are accountable to the Virginia Board of Long-Term Care Administrators, they should not be required to be on the premises of an assisted living facility for a specified number of hours per week. If the Virginia Board of Long-Term Care Administrators determines that a licensed administrator's performance is inadequate, it can suspend, place on probation, or revoke that person's license. DSS revised the proposed standards to reflect the same requirements regarding this matter that are specified for licensed nursing home administrators, i.e., licensed administrators will serve as the on-site agent of the licensee and be responsible on a full-time basis for the administration and management of the facility.

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

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to amend its Standards for Licensed Assisted Living Facilities to incorporate recent changes to Virginia statute and Department of Health Professions (DHP) regulations that affect assisted living facilities. The Board also proposes several amendments to this regulation to conform with recommendations from the Assisted Living Facility Advisory Committee (ALFAC). Among the changes that are ALFAC initiated, the Board proposes to:

- Require facility staff to document when residents delegate management of personal funds to a facility;
- Modify requirements that govern how much time an administrator must spend at any facilities which he administers;
- Change the timing for staff to submit tuberculosis test results from the time of hire to on or within seven days prior to the first day of work; and
- Add qualified mental health professionals to the list of individuals who may be involved in the review and update of individualized service plans.

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

Estimated Economic Impact. Persuant to statutory mandate, the Board of Long-Term Care Administrators and the Board of Nursing within DHP have respectively promulgated regulations for licensure of assisted living facility administrators and for registration of medication aides. The State Board of Social Services (Board) proposes to amend sections of their regulation for assisted living facilities so that it conforms with these DHP regulations. For instance, the Board proposes to amend the medication aide requirements in this regulation to explicitly note that medication aides must be registered with the Board of Nursing and that the Board of Nursing requires continuing education for medication aides that must be completed in addition to the continuing education required by this regulation.

The Board also proposes amendments to this regulation that will bring it into conformity with recent changes to the Code of Virginia. For instance, the Board proposes to eliminate provisions in this regulation for dedicated hospice facilities as these are no longer licensed as assisted living facilities. The changes that the Board proposes to conform this regulation to the Code of Virginia and to statute-mandated DHP regulations will likely not cause any new costs for regulated entities. These changes will, however, provide the added benefit of clarity for individuals who would likely, and rightly, be confused by having conflicting standards coming from different sources.

Currently, this regulation has provisions for facilities to manage residents' private funds if residents choose to delegate this authority. Facility staff is required to keep such funds seperate from any facility money and must keep an accounting of these funds which must be available to affected residents or their legal representatives. There is, however, no current explicit requirement that facilities have documented proof that residents have delegated authority over their funds. The Board proposes to add this requirement. This change is likely to slightly increase bookkeeping costs for facilities but will also benefit both facility staff and residents and their families. Facility staff will be less open to charges of improper keeping of resident funds and residents will be better protected from fund misappropriation.

Current regulation has fairly strict requirements as to how many hours administrators who administer multiple smaller facilities must spend at each of these facilities; current regulation also has different limits on the number of smaller facilities that an administrator may be in charge of depending on how many residents these facilities are licensed for. Currently, administrators must spend at least 10 hours a week in any facilities that are licensed for 10 or fewer residents and may administer up to four of these facilities. Administrators must spend at least 20 hours a week in any facilities that are licensed for 11-19 residents and may only administer two such facilities. Administrators must work a total of at least 40 hours in all their facilities combined. This proposed regulation will require that administrators spend at least 10 hours working in each facility that they administer but must still spend at least 40 hours total working in all facilities combined. Administrators will be allowed to work in up to four facilities so long as these facilities have capacity of 40 or fewer residents total. These regulatory changes will likely not adversely affect patient care but will allow administrators greater flexibility in doing their jobs.

Current regulation requires facility staff to submit the results of a tuberculosis risk assessment upon hire even if they do not start working for some time after that. This proposed regulation will require staff to submit the results of this assessment sometime in a seven day period before they actually start to work (or on their start date). This provision will allow facilities to better protect residents from possible exposure to tuberculosis.

Businesses and Entities Affected. The Department of Social Services (DSS) reports that there are approximately 600 licensed assisted living facilities in the Commonwealth. All of these facilities, and all administrators and medication aides who work in these facilities, will be affected by this proposed regulation.

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

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

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

Small Businesses: Costs and Other Effects. DSS reports that most, if not all, of the approximately 600 assisted living facilities in the Commonwealth are small businesses. These businesses will likely incur slightly higher bookkeeping costs because of a provision in this proposed regulation that require documentation of residents' consent for facilities to manage their funds.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternate methods that the board could have employed in writing the requirements of this proposed regulation that would have both accomplished the board's goals and further minimized any adverse impact on small businesses.

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

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

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

Summary:

This regulatory action amends the regulation pertaining to licensure of administrators and registration of medication aides in order to coordinate the State Board of Social Services (board) assisted living facility regulation with regulations of the Virginia Board of Long-Term Care Administrators and the Virginia Board of Nursing at the Department of Health Professions. The licensure of administrators and the registration of medication aides are a result of revisions to the Code of Virginia. Other changes made by the regulatory action include adding a requirement for reporting outbreaks of disease and deleting a standard regarding dedicated hospice facilities. These changes are being made to mirror revisions made to the Code of Virginia.

The regulatory action also includes changes to the requirements for safeguarding resident funds, shared administrators for smaller homes, initial tuberculosis risk assessment report, bed hold policy information, individualized service plan update and review, administration of medication, fire safety inspection reports, and fire and emergency evacuation drill records. In addition, revisions were made to several definitions of terms used in the regulations. Changes were also made to improve clarity and readability, and to make technical adjustments.

Part I
General Provisions

22VAC40-72-10. Definitions.

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

"Activities of daily living (ADLs)" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in

performing these activities is a part of determining appropriate level of care and services.

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

"Administrator" means the licensee or a person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia. The individual or his legal representative can rescind the document at any time.

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

Assuming responsibility for the well-being of residents, either directly or through contracted agents, is considered "general supervision and oversight."

"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, mental retardation, and substance abuse services through its own staff or through contracts with other organizations and providers.

"Building" means a structure with exterior walls under one roof.

"Cardiopulmonary resuscitation (CPR)" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed and has no pulse and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or mental retardation, that prohibits an individual from reaching his highest level of functioning.

"Commissioner" means the commissioner of the department, his designee or authorized representative.

"Community services board" or "CSB" means a citizens' board established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, mental retardation and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes a local or regional program designated by the Department for the Aging as a public conservator pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 of the Code of Virginia.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse. Residents requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or

2. Individuals with a health care condition with a high potential for medical instability.

"Department" means the State Department of Social Services.

"Department's representative" means an employee or designee of the State Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ingredient(s), i.e., vitamins, minerals, amino acid, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients. Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other employees of a facility who assist residents in the performance of personal care ~~and~~ or daily living activities. Examples are likely to include nursing staff, activity staff, geriatric or personal care assistants, medication aides, and mental health workers but are not likely to include waiters, chauffeurs, cooks, and dedicated housekeeping, maintenance and laundry personnel.

"Discharge" means the movement of a resident out of the assisted living facility.

"Emergency" means, as it applies to restraints, a situation that may require the use of a restraint where the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by denying entry into the facility until the requirements for admission have been met.

"Good character and reputation" means findings have been established and knowledgeable, reasonable, and objective people agree that the individual (i) maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability; and (ii) has a history and pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of adults. Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, may not act as references.

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person, managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent avoidable additional deformity or dysfunction.

"Health care provider" means a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services such as a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization. This list is not all inclusive.

"Household member" means any person domiciled in an assisted living facility other than residents or staff.

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or life threatening injuries.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer or employee or as an independent contractor with the facility.

"Independent living environment" means one in which the resident or residents perform all activities of daily living and instrumental activities of daily living for themselves without

requiring the assistance of another person and take medication without requiring the assistance of another person.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living for himself without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. (If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this policy shall not be considered in determining independent status.)

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Individualized service plan (ISP)" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

"Instrumental activities of daily living (IADLs)" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the resident as his agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the function or functions for which he has legal authority to act.

A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect his life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions.

For any given standard, the term legal representative applies solely to the legal representative with the authority to act in regard to the function or functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a nurse practitioner, registered nurse, licensed practical nurse, (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist.

Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

"Licensee" means any person, association, partnership, corporation, company or public agency to whom the license is issued.

"Manager" means a designated person who serves as a manager pursuant to 22VAC40-72-220 and 22VAC40-72-230.

"Mandated reporter" means the following persons acting in their professional capacity who have reason to suspect abuse, neglect or exploitation of an adult:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503 of the Code of Virginia, with the exception of persons licensed by the Board of Veterinary Medicine;

2. Any mental health services provider as defined in § 54.1-2400.1 of the Code of Virginia;

3. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5 of the Code of Virginia;

4. Any guardian or conservator of an adult;

5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;

6. Any person providing full, intermittent or occasional care to an adult for compensation, including but not limited to companion, chore, homemaker, and personal care workers; and

7. Any law-enforcement officer.

This is pursuant to § 63.2-1606 of the Code of Virginia.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"Medication aide" means a staff person who has ~~successfully completed (i) one of the five requirements specified in 22VAC40-72-250 C 1 through 5 (See 22VAC40-72-660 for exception), and (ii) the medication training program developed by the department and approved by the Board of Nursing.~~

~~This definition expires one year after the effective date of regulations promulgated by the Board of Nursing for the registration of medication aides. Thereafter, medication aides shall mean those persons who have~~ current registration ~~by~~ with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60).

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental retardation" means disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency" means, as it applies to restraints, circumstances that may require the use of a restraint for the purpose of providing support to a physically weakened resident.

~~"Outbreak" means a sudden rise in the incidence of a disease or symptoms above expected levels, or the occurrence of a large number of cases of a disease or symptoms in a short period of time. There is not a specific number or percentage that always constitutes an outbreak because the level of risk is dependent upon the severity of the disease or the intensity of the symptoms.~~

"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to his body.

"Physician" means an individual licensed to practice medicine or osteopathic medicine in any of the 50 states or the District of Columbia.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Private pay" means that a resident of an assisted living facility is not eligible for benefits under the Auxiliary Grants Program.

"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the antianxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the United States Food and Drug Administration.

"Public pay" means that a resident of an assisted living facility is eligible for benefits under the Auxiliary Grants Program.

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities; or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training or experience. There are specific definitions for "qualified assessor" and "qualified mental health professional" below.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the

UAI or an independent private physician or a qualified assessor for public pay individuals.

"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including and limited to (i) a physician licensed in Virginia; (ii) a psychologist: an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iii) a social worker: an individual with at least a master's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (iv) a Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS); (v) a clinical nurse specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (viii) any other person deemed by the Department of Mental Health, Mental Retardation and Substance Abuse Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional that are provided by a rehabilitative therapist (physical therapist, occupational therapist or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in his capabilities and are provided to restore or improve his level of functioning.

"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Respite care" means services provided for maintenance and care of aged, infirm or disabled adults for temporary periods of time, regularly or intermittently. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Safe, secure environment" means a self-contained special care unit for individuals with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. Means of egress that lead to unprotected areas must be monitored or secured through devices that conform to applicable building and fire safety standards, including but not limited to door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices or perimeter fence gates. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring or long-term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to acute or episodic conditions, nor conditions arising from treatable metabolic or chemical imbalances or caused by reactions to medication or toxic substances.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Skilled nursing treatment" means a service ordered by a physician or other prescriber that is provided by and within the scope and practice of a licensed nurse.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function or duration of employment at the facility. Staff or staff person also includes those individuals hired through a contract to provide services for the facility.

"Substance abuse" means the use, without compelling medical reason, of alcohol or other legal or illegal drugs that results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system and the skin.

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Uniform assessment instrument (UAI)" means the department designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

22VAC40-72-30. ~~Dedicated hospice facilities.~~ (Repealed.)

~~A. Providers operating an assisted living facility that is a dedicated hospice facility shall maintain compliance with both the department's regulations for the licensure of assisted living facilities and the Department of Health's regulations for the licensure of hospice.~~

~~B. When applicable regulations for licensure of assisted living facilities and licensure of hospice are similar, the more stringent regulation shall take precedence.~~

~~C. At the time of submission of a renewal application for an assisted living facility license, providers operating a dedicated hospice facility shall include a copy of all inspection reports and plans of correction for the licensed hospice for the previous assisted living facility licensure period. These reports may be taken into consideration in the department's decision to renew an assisted living facility's license.~~

~~D. The administration of medications to residents of dedicated hospice facilities shall comply with 12VAC5-391-430 A and B. The use of medication aides is prohibited.~~

~~E. The health care oversight stipulated in 22VAC40-72-480 shall be conducted by a registered nurse, licensed physician, or a nurse practitioner or physician's assistant acting as assigned by the supervising physician and within the parameters of professional licensing.~~

Part II
Administration and Administrative Services

22VAC40-72-50. Licensee.

A. The licensee shall ensure compliance with all regulations for licensed assisted living facilities and terms of the license issued by the department; with relevant federal, state or local laws and other relevant regulations; and with the facility's own policies and procedures.

B. The licensee shall meet the following requirements:

1. The licensee shall give evidence of financial responsibility.

2. The licensee shall be of good character and reputation.

Character and reputation investigation includes, but is not limited to, background checks as required by §§ 63.2-1702 and 63.2-1721 of the Code of Virginia.

3. The licensee shall meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22VAC40-90).

4. The licensee shall protect the physical and mental well-being of residents.

5. The licensee shall exercise general supervision over the affairs of the licensed facility and establish policies and procedures concerning its operation in conformance with applicable law, these regulations, and the welfare of the residents.

6. The licensee shall develop and maintain an operating budget, including resident care, dietary, and physical plant maintenance allocations and expenditures. The budget shall be sufficient to ensure adequate funds in all aspects of operation.

7. The licensee shall ensure that the facility keeps such records, makes such reports and maintains such plans, schedules, and other information as required by this chapter for licensed assisted living facilities. The facility shall submit, or make available, to the department's representative, records, reports, plans, schedules, and other information necessary to establish compliance with this chapter and applicable law. Such records, reports, plans, schedules, and other information shall be maintained at the facility and may be inspected at any reasonable time by the department's representative.

8. The licensee shall meet the qualifications of and requirements for the administrator if he serves as the administrator of the facility.

C. An assisted living facility sponsored by a religious organization, a corporation or a voluntary association shall be controlled by a governing board of directors that shall fulfill the duties of the licensee.

D. Upon initial application for an assisted living facility license, any person applying to operate such a facility who has not previously owned or managed or does not currently own or manage a licensed assisted living facility shall be required to undergo training by the commissioner or his designated agents. Such training shall be required of those owners and currently employed administrators of an assisted living facility at the time of initial application for a license.

1. The commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the department.

2. The commissioner may at his discretion also approve for licensure applicants who meet requisite experience criteria as established by the board.

3. The training programs shall focus on the health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license.

4. The commissioner may, at his discretion, issue a license conditioned upon the owner or administrator's completion of the required training.

E. If there are plans for a facility to be voluntarily closed or sold, the licensee shall notify the regional licensing office of intent to close or sell the facility no less than 60 days prior to the closure or sale date. The following shall apply:

1. No less than 60 days prior to the planned closure or sale date, the licensee shall notify the residents, legal representatives, and designated contact persons of the intended closure or sale of the facility and the date for such, and the requirements of 22VAC40-72-420 shall apply.

2. If the facility is to be sold, at the time of notification of residents of such, the licensee shall explain to each resident, legal representative, and at least one designated contact person that unless provided otherwise by the new licensee, the resident has a choice as to whether to stay or to relocate and that if a resident chooses to stay, there must be a new agreement/acknowledgment between the resident and the new licensee that meets the specifications of 22VAC40-72-390.

3. The licensee shall provide updates regarding the closure or sale of the facility to the regional licensing office, as requested.

EXCEPTION: If plans are made at such time that 60-day notice is not possible, the licensee shall notify the regional licensing office, the residents, legal representatives, and designated contact persons as soon as the intent to close or sell the facility is known.

22VAC40-72-90. Infection control program.

A. The assisted living facility shall establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to prevent the development and transmission of disease and infection.

B. The infection control program shall include all staff and services and the entire physical plant and grounds.

C. The infection control program addressing the surveillance, prevention and control of infections shall include:

1. Establishing procedures to isolate the infecting organism;

2. Providing easy access to handwashing equipment for all staff and volunteers;

3. Training for and supervisory monitoring of all staff and volunteers in proper handwashing techniques, according to accepted professional standards, to prevent cross contamination;

4. Training for all staff and volunteers in appropriate implementation of standard precautions;

5. Prohibiting staff and volunteers with communicable diseases or infections from direct contact with residents or their food, if direct contact may transmit disease;

6. Monitoring performance of infection control practices by staff and volunteers;

7. Handling, storing, processing and transporting linens, supplies and equipment in a manner that prevents the spread of infection;

8. Handling, storing, processing and transporting medical waste in accordance with applicable regulations;

9. Maintaining an effective pest control program; and

10. Providing staff and volunteer education regarding infection risk-reduction behavior.

D. The methods utilized for infection control shall be described in a written document that shall be available to all staff.

E. The facility administrator shall immediately make or cause to be made a report of an outbreak of disease as defined by the Virginia Board of Health. Such report shall be made

by rapid means to the local health director or to the Commissioner of the Department of Health.

22VAC40-72-100. Incident reports.

A. Each facility shall report to the regional licensing office by the next working day any major incident that has negatively affected or that threatens the life, health, safety or welfare of any resident.

B. The report required in subsection A of this section shall include (i) the name of the facility, (ii) the name(s) of the resident(s) involved in the incident, (iii) the name of the person making the report, (iv) the date of the incident, (v) a description of the incident, and (vi) the actions taken in response to the incident.

C. The facility shall submit a written report of each incident specified in subsection A of this section to the regional licensing office within seven days after the incident took place. The report shall be signed and dated by the administrator and include the following information:

1. Name and address of the facility;

2. Name of the resident(s) involved in the incident;

3. Date and time of the incident;

4. Name, title, and signature of the person making the report;

5. Date of completion of the report;

6. Type of incident;

7. Description of the incident, the circumstances under which it happened, and when applicable, extent of injury or damage;

8. Location of the incident;

9. Actions taken in response to the incident;

10. Outcome resolution of the incident, and if applicable follow-up actions or care;

11. Name of staff person in charge at the time of the incident;

12. Names, telephone numbers and addresses of witnesses to the incident, if any.

D. The facility shall submit to the regional licensing office amendments to the written report when circumstances require, such as when substantial additional actions are taken, significant new information becomes available, or there is resolution of the incident after submission of the report.

E. A copy of the written report of each incident shall be maintained by the facility for at least two years.

22VAC40-72-150. Safeguarding residents' funds.

A. If the resident delegates the management of personal funds to the facility, the following standards apply:

1. Documentation of this delegation, signed and dated by the resident and the administrator, shall be maintained in the resident's record.

~~1.~~ 2. Residents' funds shall be held separately from any other moneys of the facility. Residents' funds shall not be borrowed, used as assets of the facility, or used for purposes of personal interest by the licensee/operator, administrator, or facility staff.

~~2.~~ 3. If the facility's accumulated residents' funds are maintained in a single interest-bearing account, each resident shall receive interest proportionate to his average monthly account balance. The facility may deduct a reasonable cost for administration of the account.

~~3.~~ 4. If any personal funds are held by the facility for safekeeping on behalf of the resident, a written accounting of money received and disbursed, showing a current balance, shall be maintained. Residents' funds and the accounting of the funds shall be made available to the resident or the legal representative or both upon request.

B. No facility administrator or staff person shall act as either attorney-in-fact or trustee unless the resident has no other preferred designee and the resident himself expressly requests such service by or through facility personnel. Any facility administrator or staff person so named shall be accountable at all times in the proper discharge of such fiduciary responsibility as provided under Virginia law, shall provide a quarterly accounting to the resident, and, upon termination of the power of attorney or trust for any reason, shall return all funds and assets, with full accounting, to the resident or to his legal representative or to another responsible party expressly designated by the resident. See also 22VAC40-72-120 regarding conservators or guardians appointed by a court of competent jurisdiction.

22VAC40-72-190. ~~Administrator provisions and responsibilities.~~ (Repealed.)

~~A. Each facility shall have an administrator of record. This does not prohibit the administrator from serving as the administrator of record for more than one facility.~~

~~B. The licensee shall notify the licensing office in writing within 10 working days of a change in a facility's administrator including, but not limited to, the resignation of an administrator, appointment of an acting administrator, and appointment of a new administrator.~~

~~C. When an administrator terminates employment, the licensee shall hire a new administrator within 90 days from the date of termination. Unless a new administrator is~~

~~employed immediately, a qualified acting administrator shall be appointed when the administrator terminates employment.~~

~~D. The administrator shall be responsible for the general administration of the facility and shall oversee the day-to-day operation of the facility. This shall include, but shall not be limited to, responsibility for:~~

~~1. Developing and implementing all policies and services as required by this chapter;~~

~~2. Ensuring staff and volunteers comply with residents' rights;~~

~~3. Maintaining buildings and grounds;~~

~~4. Recruiting, hiring, training, and supervising staff; and~~

~~5. Ensuring the development, implementation, and monitoring of an individualized service plan for each resident, except that a plan is not required for a resident with independent living status.~~

~~E. Either the administrator or a designated assistant who meets the qualifications of the administrator shall be awake and on duty on the premises at least 40 hours per week with no fewer than 24 of those hours being during the day shift on week days.~~

~~EXCEPTIONS:~~

~~1. 22VAC40-72-220 allows a shared administrator for smaller facilities.~~

~~2. In facilities licensed for both residential and assisted living care, if the designated assistant is performing as an administrator for fewer than 15 of the 40 hours or for fewer than four weeks due to the vacation or illness of the administrator, the requirements of 22VAC40-72-200 D shall be acceptable.~~

~~F. The facility shall maintain a written schedule of the on-site presence of the administrator and, if applicable, the designated assistant or, as provided for in 22VAC40-72-220 and 22VAC40-72-230, the manager.~~

~~1. Any changes shall be noted on the schedule.~~

~~2. The facility shall maintain a copy of the schedule for two years.~~

22VAC40-72-191. Administrator qualifications.

A. The administrator shall be at least 21 years of age.

B. The administrator shall be able to read and write, and understand this chapter.

C. The administrator shall be able to perform the duties and carry out the responsibilities required by this chapter.

D. For facilities licensed for residential living care only, the administrator shall:

1. Be a high school graduate or shall have a General Education Development (GED) Certificate,

2. (i) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education or (ii) have successfully completed a department-approved course specific to the administration of an assisted living facility, and

3. Have at least one year of administrative or supervisory experience in caring for adults in a group care facility.

EXCEPTIONS:

1. A nursing home administrator or an assisted living facility administrator licensed by the Virginia Board of Long-Term Care Administrators,

2. A licensed nurse who meets the experience requirements in subdivision 3 of this subsection, or

3. An administrator of an assisted living facility employed prior to December 28, 2006, who met the requirements in effect when employed and who has been continuously employed as an assisted living facility administrator.

E. For facilities licensed for both residential and assisted living care, the administrator shall be licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1 of the Code of Virginia and in conformance with 18VAC95-20 or 18VAC95-30 respectively.

22VAC40-72-200. ~~Administrator qualifications.~~ (Repealed.)

~~A. The administrator shall be at least 21 years of age.~~

~~B. The administrator shall be able to read and write, and understand this chapter.~~

~~C. The administrator shall be able to perform the duties and carry out the responsibilities required by this chapter.~~

~~D. For facilities licensed for residential living care only, the administrator shall:~~

~~1. Be a high school graduate or shall have a General Education Development (GED) Certificate;~~

~~2. (i) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education or (ii) have successfully completed a department-approved course specific to the administration of an assisted living facility; and~~

~~3. Have at least one year of administrative or supervisory experience in caring for adults in a group care facility.~~

~~EXCEPTIONS:~~

~~1. A licensed nursing home administrator who meets the qualifications under § 54.1-3103 of the Code of Virginia;~~

~~2. A licensed nurse who meets the experience requirements in subdivision 3 of this subsection;~~

~~3. An administrator of an assisted living facility employed prior to December 28, 2006, who met the requirements in effect when employed and who has been continuously employed as an assisted living facility administrator.~~

~~E. Until the provisions of this subsection expire as specified in subsection F of this section, for facilities licensed for both residential and assisted living care, the administrator shall:~~

~~1. Be a graduate of a four-year college or university accredited by an association recognized by the U.S. Secretary of Education; or~~

~~2. Have successfully completed at least 60 credit hours of courses in human services or group care administration, from a college or university accredited by an association recognized by the U.S. Secretary of Education; or~~

~~EXCEPTION: Ten or fewer of the 60 credit hours may be in business courses.~~

~~3. Have successfully completed at least 30 credit hours of courses in human services or group care administration from a college or university accredited by an association recognized by the U.S. Secretary of Education and have successfully completed a department approved course specific to the administration of an assisted living facility; and~~

~~4. Have completed at least one year of administrative or supervisory experience in caring for adults in a group care facility.~~

~~EXCEPTIONS:~~

~~1. A licensed nursing home administrator who meets the qualifications under § 54.1-3103 of the Code of Virginia;~~

~~2. A licensed registered nurse who meets the experience requirements in subdivision 4 of this subsection;~~

~~3. An administrator of an assisted living facility employed prior to December 28, 2006, who met the requirements in effect when employed and who has been continuously employed as an assisted living facility administrator.~~

~~EXCEPTION: An administrator employed prior to February 1, 1996, who met the exception to the standards effective February 1, 1996, shall successfully complete within one year a department approved course specific to the administration of an assisted living facility.~~

~~F. The provisions of subsection E of this section expire one year after the effective date of regulations promulgated by the Board of Long-Term Care Administrators for the licensure of assisted living facility administrators. Thereafter, assisted living administrators for facilities licensed for both residential and assisted living care shall meet the qualifications for licensure and be licensed by the Board of Long-Term Care Administrators within the Virginia Department of Health Professions.~~

~~G. The administrator, designated assistant administrator, or acting administrator shall not be a resident of the facility.~~

22VAC40-72-201. Administrator provisions and responsibilities.

A. Each facility shall have an administrator of record.

B. When an administrator terminates employment, the licensee shall hire a new administrator within 90 days from the date of termination. If a new administrator is not employed immediately when the administrator terminates employment, a qualified acting administrator, who is not required to be licensed, shall be appointed so that no lapse in administrator coverage occurs.

1. The licensee shall notify the department's regional licensing office in writing within 10 working days of a change in a facility's administrator including, but not limited to, the resignation of an administrator, appointment of an acting administrator, and appointment of a new administrator.

2. For facilities licensed for both residential and assisted living care, if the facility is operating without an administrator licensed by the Virginia Board of Long-Term Care Administrators, the acting administrator shall immediately notify the Virginia Board of Long-Term Care Administrators and the department's regional licensing office of this fact.

EXCEPTION: An acting administrator who is awaiting the final licensing decision of the Virginia Board of Long-Term Care Administrators may be granted one extension of up to 60 days in addition to the 90 allowed days if a written request to the regional licensing office of the Virginia Department of Social Services provides documentation of such.

C. The administrator shall be responsible for the general administration and management of the facility and shall oversee the day-to-day operation of the facility. This shall include, but shall not be limited to, responsibility for:

1. Maintaining compliance with applicable laws and regulations;

2. Developing and implementing all policies, procedures and services as required by this chapter;

3. Ensuring staff and volunteers comply with residents' rights;

4. Maintaining buildings and grounds;

5. Recruiting, hiring, training, and supervising staff; and

6. Ensuring the development, implementation, and monitoring of an individualized service plan for each resident, except that a plan is not required for a resident with independent living status.

D. For facilities licensed for residential living care only, either the administrator or a designated assistant who meets the qualifications of the administrator shall be awake and on duty on the premises at least 40 hours per week with no fewer than 24 of those hours being during the day shift on week days.

EXCEPTIONS:

1. 22VAC40-72-220 allows a shared administrator for smaller facilities.

2. If the administrator is licensed as an assisted living facility administrator or nursing home administrator by the Board of Long-Term Care Administrators, the provisions regarding the administrator in subsection E of this section apply. When such is the case, there is no requirement for a designated assistant.

E. For facilities licensed for both residential and assisted living care, an administrator licensed by the Virginia Board of Long-Term Care Administrators, as specified in 22VAC40-72-191 E, shall serve as the on-site agent of the licensee and shall be responsible on a full-time basis for the day-to-day administration and management of the facility, except as provided in 22VAC40-72-220.

F. The administrator, acting administrator or, as allowed in subsection D of this section, designated assistant administrator shall not be a resident of the facility.

G. The facility shall maintain a written work schedule of the on-site presence of the administrator and, if applicable, the designated assistant or, as provided for in 22VAC40-72-220 and 22VAC40-72-230, the manager.

1. Any changes shall be noted on the schedule.

2. The facility shall maintain a copy of the schedule for two years.

22VAC40-72-210. Administrator training.

A. ~~The~~ For facilities licensed for residential living care only, the administrator shall attend at least 20 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within 12 months from the date of employment and annually thereafter from that date. When adults with mental impairments reside in the facility, at least five of the required 20 hours of training shall focus on topics related to residents' mental impairments. Documentation of attendance shall be retained at the facility and shall include title of course, name of the entity that provided the training, date and number of hours.

EXCEPTION: If the administrator is licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators, subsection B of this section applies rather than subsection A of this section.

B. For facilities licensed for both residential and assisted living care, the administrator shall meet the continuing education requirements for licensure as an assisted living facility or nursing home administrator, whichever is applicable.

C. Any administrator who has not previously undergone the training specified in 22VAC40-72-50 D shall be required to complete that training within two months of employment as administrator of the facility. The training may be counted toward the annual training requirement for the first year, except that for licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements.

EXCEPTION: Administrators employed prior to December 28, 2006, are not required to complete this training.

~~C. Administrators shall be required to complete training on standards when they are revised, unless the department determines that such training is not necessary.~~

D. If medication is administered to residents by medication aides as allowed in 22VAC40-72-660 1 b, the administrator shall successfully complete a ~~medication~~ training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training, but need not include the prerequisite for the program or the written examination for registration. The training shall be completed within four months of employment as an administrator and may be counted toward the annual training requirement for the first year, except that for licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements. ~~Administrators employed prior to December 28, 2006, have six months from December 28, 2006, to successfully complete the medication training program.~~ The following exceptions apply:

1. The administrator is licensed by the Commonwealth of Virginia to administer medications~~;~~, or

2. Medication aides are supervised by an individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications.

22VAC40-72-220. Shared administrator for smaller facilities.

~~The~~ A. For facilities licensed for residential living care only, the administrator may be awake and on duty on the premises

of a facility for fewer than the minimum 40 hours per week, without a designated assistant, under the following conditions:

~~1. In facilities licensed for 10 or fewer residents:~~

~~a. The administrator shall be awake and on duty on the premises of each facility for at least 10 hours a week; and~~

~~b. The administrator shall serve no more than four facilities.~~

~~2. In facilities licensed for 11-19 residents:~~

~~a. The administrator shall be awake and on duty on the premises of each facility for at least 20 hours a week; and~~

~~b. The administrator shall serve no more than two facilities.~~

~~3. In facilities licensed for 10 or fewer residents as specified in subdivision 1 of this section and in facilities licensed for 11-19 residents as specified in subdivision 2 of this section:~~

~~a. The administrator shall serve as a full time administrator, i.e., shall be awake and on duty on the premises of more than one assisted living facility for at least 40 hours a week;~~

1. The administrator shall serve no more than four facilities.

2. The combined total licensed capacity of the facilities served by the administrator shall be 40 or fewer residents.

3. The administrator shall be awake and on duty on the premises of each facility served for at least 10 hours a week.

4. The administrator shall serve as a full-time administrator, i.e., shall be awake and on duty on the premises of all facilities served for a combined total of at least 40 hours a week.

~~b.~~ 5. Each of the facilities served shall be within a 30-minute average one way travel time of the other facilities~~;~~.

~~c.~~ 6. When not present at a facility, the administrator shall be on call to that facility during the hours he is working as an administrator and shall maintain such accessibility through suitable communication devices~~;~~.

~~d.~~ 7. A designated assistant may act in place of the administrator during the required minimum of 40 hours only if the administrator is ill or on vacation and for a period of time that shall not exceed four consecutive weeks. The designated assistant shall meet the qualifications of the administrator~~;~~.

~~e. There shall be a designated person who shall serve as manager and who~~ 8. Each of the facilities served shall have a manager, designated and supervised by the administrator. The manager shall be awake and on duty on the premises of ~~each~~ the facility for the remaining part of the 40 required hours per week when the administrator or designated assistant as permitted in subdivision 7 of this subsection is not present at the facility ~~and who shall be supervised by the administrator~~. The manager shall meet the following ~~minimum~~ qualifications and requirements:

~~(1)~~ a. The manager shall be at least 21 years of age.

~~(2)~~ b. The manager shall be able to read and write, and understand this chapter.

~~(3)~~ c. The manager shall be able to perform the duties and to carry out the responsibilities of his position.

~~(4)~~ d. The manager shall:

~~(a)~~ (1) Be a high school graduate or shall have a General Education Development (GED) Certificate~~;~~,

~~(b)~~ (2) Have successfully completed (i) at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education or (ii) a department-approved course of 40 or fewer hours specific to the management of an assisted living facility~~;~~, and

~~(c)~~ (3) Have at least one year of administrative or supervisory experience in caring for adults in a group care facility.

EXCEPTION: A licensed nurse who meets the experience requirements in subdivision ~~(c)~~ (3) of this subdivision ~~(4)~~ d.

~~(5)~~ e. The manager shall not be a resident of the facility~~;~~.

~~f.~~ 9. The manager shall complete the training specified in 22VAC40-72-50 D within two months of employment as manager. The training may be counted toward the annual training requirement for the first year~~;~~.

~~g. Managers shall be required to complete training on standards when they are revised, unless the department determines that such training is not necessary;~~

~~h.~~ 10. The manager shall attend at least 16 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within each 12-month period. When adults with mental impairments reside in the facility, at least four of the required 16 hours of training shall focus on topics related to residents' mental impairments. Documentation of attendance shall be retained at the facility and shall include title of course, name of the entity that provided the training, date and number of hours~~;~~.

~~i.~~ 11. There shall be a written management plan for each facility that includes written policies and procedures that describe how the administrator shall oversee the care and

supervision of the residents and the day-to-day operation of the facility~~;~~.

~~j.~~ 12. The minimum of 40 hours per week required for the administrator or manager to be awake and on duty on the premises of a facility shall include at least 24 hours during the day shift on week days.

~~4. This section shall not apply to an administrator who serves both an assisted living facility and a nursing home, as provided for in 22VAC40-72-230.~~

EXCEPTION: If the administrator is licensed as an assisted living facility administrator or nursing home administrator by the Board of Long-Term Care Administrators, the provisions in subsection B of this section apply rather than subsection A of this section.

B. For facilities licensed for both residential and assisted living care, the administrator, as the on-site agent of the licensee or licensees, may be responsible for the day-to-day administration and management of multiple facilities under the following conditions:

1. The administrator shall serve no more than four facilities.

2. The combined total licensed capacity of the facilities served by the administrator shall be 40 or fewer residents.

3. The administrator shall serve on a full-time basis, proportioning his time among all the facilities served in order to ensure that he provides sufficient administrative and management functions to each facility.

4. Each of the facilities served shall be within a 30-minute average one way travel time of the other facilities.

5. When not present at a facility, the administrator shall be on call to that facility during the hours he is working as an administrator and shall maintain such accessibility through suitable communication devices.

6. Each of the facilities served shall have a manager, designated and supervised by the administrator, to assist the administrator in overseeing the care and supervision of the residents and the day-to-day operation of the facility. The majority of the time, the administrator and the manager shall be present at a facility at different times to ensure appropriate oversight of the facility. The manager shall meet the qualifications and requirements specified in subdivisions A 8 through 11 of this section.

7. There shall be a written management plan for each facility that includes written policies and procedures that describe how the administrator shall oversee the care and supervision of the residents and the day-to-day operation of the facility.

C. This section shall not apply to an administrator who serves both an assisted living facility and a nursing home as provided for in 22VAC40-72-230.

22VAC40-72-230. Administrator of both assisted living facility and nursing home.

A. Any person meeting the qualifications for a licensed nursing home administrator pursuant to § 54.1-3103 of the Code of Virginia may serve as the administrator of both an assisted living facility and a licensed nursing home, provided the assisted living facility and licensed nursing home are part of the same building and the requirements of subsections B and C of this section are met.

B. Whenever an assisted living facility and a licensed nursing home have a single administrator, there shall be a written management plan that addresses the care and supervision of the assisted living facility residents. The management plan shall include, but not be limited to, the following:

1. Written policies and procedures that describe how the administrator will oversee the care and supervision of the residents and the day-to-day operation of the facility;

2. If the administrator does not provide the direct management of the assisted living facility or only provides a portion thereof, the plan shall specify a designated individual who shall serve as manager and who shall be supervised by the administrator.

C. The manager referred to in subdivision B 2 of this section shall be on-site and meet the ~~following minimum~~ qualifications and requirements~~:~~ of 22VAC40-72-220 A 8 through 11.

~~1. The manager shall be at least 21 years of age.~~

~~2. The manager shall be able to read and write, and understand this chapter.~~

~~3. The manager shall be able to perform the duties and carry out the responsibilities of his position.~~

~~4. The manager shall:~~

~~a. Be a high school graduate or shall have a General Education Development (GED) Certificate;~~

~~b. (i) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education or (ii) have successfully completed a department-approved course of 40 or fewer hours specific to the management of an assisted living facility; and~~

~~c. Have at least one year of administrative or supervisory experience in caring for adults in a group care facility.~~

~~EXCEPTIONS:~~

~~1. A licensed nurse who meets the experience requirements in subdivision c of this subdivision 4;~~

~~2.~~ EXCEPTION: A manager employed prior to December 28, 2006, who met the requirements in effect when employed and who has been continuously employed as a manager is excepted from 22VAC40-72-220 A 8 a, 8 d, and 9.

~~5. The manager shall not be a resident of the facility.~~

~~6. The manager shall complete the training specified in 22VAC40-72-50 D within two months of employment as manager. The training may be counted toward the annual training requirement for the first year.~~

~~EXCEPTION: Managers employed prior to December 28, 2006, are not required to complete this training.~~

~~7. Managers shall be required to complete training on standards when they are revised, unless the department determines that such training is not necessary.~~

~~8. The manager shall attend at least 16 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within each 12 month period. When adults with mental impairments reside in the facility, at least four of the required 16 hours of training shall focus on residents who are mentally impaired. Documentation of attendance shall be retained at the facility and shall include title of course, name of the entity that provided the training, date and number of hours.~~

22VAC40-72-260. Direct care staff training.

A. In facilities licensed for residential living care only, all direct care staff shall attend at least eight hours of training annually (in addition to (i) required first aid training; ~~and~~ (ii) CPR ~~training)~~ training, if taken; and (iii) for medication aides, continuing education required by the Virginia Board of Nursing). Training for the first year shall commence no later than 60 days after employment.

1. The training shall be relevant to the population in care and shall be provided by a qualified individual through in-service training programs or institutes, workshops, classes, or conferences.

2. When adults with mental impairments reside in the facility, at least two of the required eight hours of training shall focus on the resident who is mentally impaired.

3. Documentation of the type of training received, the entity that provided the training, number of hours of training, and dates of the training shall be kept by the facility in a manner that allows for identification by individual staff person and is considered part of the staff member's record.

B. In facilities licensed for both residential and assisted living care, all direct care staff shall attend at least 16 hours of training annually (in addition to (i) required first aid ~~and~~ training; (ii) CPR ~~training)~~ training, if taken; and (iii) for medication aides, continuing education required by the Virginia Board of Nursing). Training for the first year shall commence no later than 60 days after employment.

1. The training shall be relevant to the population in care and shall be provided by a qualified individual through in-service training programs or institutes, workshops, classes, or conferences.

2. When adults with mental impairments reside in the facility, at least four of the required 16 hours of training shall focus on the resident who is mentally impaired.

3. Documentation of the type of training received, the entity that provided the training, number of hours of training, and dates of the training shall be kept by the facility in a manner that allows for identification by individual staff person and is considered part of the staff person's record.

EXCEPTION: Direct care staff who are licensed health care professionals or certified nurse aides shall attend at least 12 hours of annual training.

22VAC40-72-290. Staff records and health requirements.

A. A record shall be established for each staff person. It shall not be destroyed until at least two years after employment is terminated.

B. All staff records shall be retained at the facility, treated confidentially, kept in a locked area, and made available for inspection by the department's representative upon request.

EXCEPTION: Emergency contact information required by subdivision C 14 of this section shall also be kept in an easily accessible place.

C. Personal and social data to be maintained on staff and included in the staff record are as follows:

1. Name;

2. Birthdate;

3. Current address and telephone number;

4. Social security number;

5. Position title, job description and date employed;

6. Verification that the staff person has received a copy of his job description and the organizational chart;

7. Most recent previous employment;

8. For persons employed after November 9, 1975, copies of at least two references or notations of verbal references, obtained prior to employment, reflecting the date of the reference, the source and the content;

9. An original criminal record report and a sworn disclosure statement;

10. Previous experience or training or both;

11. Verification of current professional license, certification, registration, or completion of a required approved training course;

12. Annual staff performance evaluations;

13. Any disciplinary action taken;

14. Name and telephone number of person to contact in an emergency;

15. Documentation of formal training received following employment, including orientation, in-services and workshops; and

16. Date and reason for termination of employment, when applicable.

D. Health information required by these standards shall be maintained at the facility and be included in the staff record for the administrator and each staff person, and also shall be maintained at the facility for each household member who comes in contact with residents.

1. Initial tuberculosis examination and report.

a. Each staff person ~~at the time of hire~~ on or within seven days prior to the first day of work at the facility and each household member prior to coming in contact with residents shall submit the results of a risk assessment, documenting the absence of tuberculosis in a communicable form as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it. The risk assessment shall be no older than 30 days.

b. An evaluation shall not be required for a staff person who (i) has separated from employment with a facility licensed or certified by the Commonwealth of Virginia, (ii) has a break in service of six months or less, and (iii) submits a copy of the original statement of tuberculosis screening to his new employer.

2. Subsequent tuberculosis evaluations and reports.

a. Any staff person or household member required to be evaluated who comes in contact with a known case of infectious tuberculosis shall be screened as determined appropriate based on consultation with the local health department.

b. Any staff person or household member required to be evaluated who develops chronic respiratory symptoms of three weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.

c. Each staff person or household member required to be evaluated shall annually submit the results of a risk assessment, documenting that the individual is free of tuberculosis in a communicable form as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it.

3. Any individual suspected to have infectious tuberculosis shall not be allowed to return to work or have any contact with the residents and personnel of the facility until a physician has determined that the individual is free of infectious tuberculosis.

4. The facility shall report any active case of tuberculosis developed by a staff person or household member required to be evaluated to the local health department.

E. At the request of the administrator of the facility or the department, a report of examination by a licensed physician shall be obtained when there are indications that the safety of residents in care may be jeopardized by the physical or mental health of a staff person or household member.

F. Any staff person or household member who, upon examination or as a result of tests, shows indication of a physical or mental condition that may jeopardize the safety of residents in care or that would prevent performance of duties:

1. Shall be removed immediately from contact with residents~~;~~, and

2. Shall not be allowed contact with residents until the condition is cleared to the satisfaction of the examining physician as evidenced by a signed statement from the physician.

Part V
Admission, Retention and Discharge of Residents

22VAC40-72-340. Admission and retention of residents.

A. No resident shall be admitted or retained:

1. For whom the facility cannot provide or secure appropriate care~~;~~,

2. Who requires a level of care or service or type of service for which the facility is not licensed or which the facility does not provide~~;~~, or

3. If the facility does not have staff appropriate in numbers and with appropriate skill to provide the care and services needed by the resident.

B. Assisted living facilities shall not admit an individual before a determination has been made that the facility can meet the needs of the resident. The facility shall make the determination based upon the following information at a minimum:

1. The completed UAI~~;~~.

2. The physical examination report~~;~~.

3. A documented interview between the administrator or a designee responsible for admission and retention decisions, the resident and his legal representative, if any. In some cases, medical conditions may create special circumstances that make it necessary to hold the interview on the date of admission.

4. A screening of psychological, behavioral, and emotional functioning, conducted by a qualified mental health professional, if recommended by the UAI assessor, a health care professional, or the administrator or designee responsible for the admission and retention decision. This includes meeting the requirements of 22VAC40-72-360.

C. An assisted living facility shall only admit or retain residents as permitted by its use and occupancy classification and certificate of occupancy. The ambulatory/nonambulatory status of an individual is based upon:

1. Information contained in the physical examination report~~;~~, and

2. Information contained in the most recent UAI.

D. Upon receiving the UAI prior to admission of a resident, the assisted living facility administrator shall provide written assurance to the resident that the facility has the appropriate license to meet his care needs at the time of admission. Copies of the written assurance shall be given to the legal representative and case manager, if any, and a copy signed by the resident or his legal representative shall be kept in the resident's record.

E. All residents shall be 18 years of age or older.

F. No person shall be admitted without his consent and agreement, or that of his legal representative with demonstrated legal authority to give such consent on his behalf.

G. Assisted living facilities shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency;

2. Dermal ulcers III and IV except those stage III ulcers that are determined by an independent physician to be healing, as permitted in subsection H of this section;

3. Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a health care professional licensed in Virginia as permitted in subsection I of this section or except as permitted in subsection J of this section;

4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;

5. Psychotropic medications without appropriate diagnosis and treatment plans;

6. Nasogastric tubes;

7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection J of this section;

8. Individuals presenting an imminent physical threat or danger to self or others;

9. Individuals requiring continuous licensed nursing care;

10. Individuals whose physician certifies that placement is no longer appropriate;

11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the UAI and meet Medicaid nursing facility level of care criteria as defined in the State Plan for Medical Assistance (12VAC30-10); or

12. Individuals whose physical or mental health care needs cannot be met in the specific assisted living facility as determined by the facility.

H. When a resident has a stage III dermal ulcer that has been determined by an independent physician to be healing, periodic observation and any necessary dressing changes shall be performed by a licensed health care professional under a physician's or other prescriber's treatment plan.

I. Intermittent intravenous therapy may be provided to a resident for a limited period of time on a daily or periodic basis by a licensed health care professional under a physician's or other prescriber's treatment plan. When a course of treatment is expected to be ongoing and extends beyond a two-week period, evaluation is required at two-week intervals by the licensed health care professional.

J. At the request of the resident in an assisted living facility and when his independent physician determines that it is appropriate, (i) care for the conditions or care needs specified in subdivisions G 3 and 7 of this section may be provided to the resident by a physician licensed in Virginia, a nurse licensed in Virginia or a nurse holding a multistate licensure privilege under a physician's or other prescriber's treatment plan, or a home care organization licensed in Virginia or (ii) care for the conditions or care needs specified in subdivision G 7 of this section may also be provided to the resident by unlicensed direct care facility staff if the care is delivered in accordance with the regulations of the Board of Nursing for delegation by a registered nurse, 18VAC90-20-420 through 18VAC90-20-460 and 22VAC40-72-460 D.

This standard does not apply to recipients of auxiliary grants.

K. When care for a resident's special medical needs is provided by licensed staff of a home care agency, the assisted

living facility direct care staff may receive training from the home care agency staff in appropriate treatment monitoring techniques regarding safety precautions and actions to take in case of emergency.

L. Notwithstanding § 63.2-1805 of the Code of Virginia, at the request of the resident, hospice care may be provided in an assisted living facility under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, if the hospice program determines that such program is appropriate for the resident.

22VAC40-72-390. Resident agreement with facility.

A. At or prior to the time of admission, there shall be a written agreement/acknowledgment of notification dated and signed by the resident/applicant for admission or the appropriate legal representative, and by the licensee or administrator. This document shall include the following:

1. Financial arrangement for accommodations, services and care that specifies:

a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;

b. Description of all accommodations, services, and care that the facility offers and any related charges;

c. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment;

d. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;

e. If the ownership of any personal property, real estate, money or financial investments is to be transferred to the facility at the time of admission or at some future date, it shall be stipulated in the agreement; and

f. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.

2. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions and signed acknowledgment that they have been reviewed by the resident or his legal representative.

3. Acknowledgment that the resident or his legal representative has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility.

4. Acknowledgment that the resident has been informed of the policy required by 22VAC40-72-840 J regarding weapons.

5. Those actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility.

6. Acknowledgment that the resident or his legal representative or responsible individual as stipulated in 22VAC40-72-550 G has reviewed a copy of § 63.2-1808 of the Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained to him.

7. Acknowledgment that the resident or his legal representative or responsible individual as stipulated in 22VAC40-72-550 G has reviewed and had explained to him the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia, including the grievance policy and the transfer/discharge policy.

8. Acknowledgment that the resident has been informed that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council. (See 22VAC40-72-810.)

9. Acknowledgment that the resident has been informed of the bed hold policy in case of temporary transfer or movement from the facility, if the facility has such a policy.

10. Acknowledgment that the resident has been informed of the rules and restrictions regarding smoking on the premises of the facility, including but not limited to that which is required by 22VAC40-72-800.

11. Acknowledgment that the resident has been informed of the policy regarding the administration and storage of medications and dietary supplements.

12. Acknowledgment that the resident has received written assurance that the facility has the appropriate license to meet his care needs at the time of admission, as required by 22VAC40-72-340 D.

B. Copies of the signed agreement/acknowledgment of notification shall be provided to the resident and as appropriate, his legal representative and shall be retained in the resident's record.

C. The original agreement shall be updated whenever there are changes in financial arrangements, accommodations, services, care provided by the facility, or requirements governing the resident's conduct, and signed by the licensee or administrator and the resident or his legal representative. If the original agreement provides for specific changes in ~~financial arrangements, services, or requirements~~ any of these items, this standard does not apply to those changes.

22VAC40-72-420. Discharge of residents.

A. When actions, circumstances, conditions, or care needs occur that will result in the discharge of a resident, discharge planning shall begin immediately, and there shall be documentation of such, including the beginning date of discharge planning. The resident shall be moved within 30 days, except that if persistent efforts have been made and the time frame is not met, the facility shall document the reason and the efforts that have been made.

B. As soon as discharge planning begins, the assisted living facility shall notify the resident and the resident's legal representatives and designated contact person if any, of the planned discharge, the reason for the discharge, and that the resident will be moved within 30 days unless there are extenuating circumstances as referenced in subsection A of this section. Written notification of the actual discharge date shall be given to the resident and the resident's legal representatives and contact person if any, at least 14 calendar days prior to the date that the resident will be discharged.

C. The assisted living facility shall adopt and conform to a written policy regarding the number of calendar days notice that is required when a resident wishes to move from the facility. Any required notice of intent to move shall not exceed 30 days.

D. The facility shall assist the resident and his legal representative, if any, in the discharge or transfer process. The facility shall help the resident prepare for relocation, including discussing the resident's destination. Primary responsibility for transporting the resident and his possessions rests with the resident or his legal representative.

E. When a resident's condition presents an immediate and serious risk to the health, safety or welfare of the resident or others and emergency discharge is necessary, 14-day notification of planned discharge does not apply, although the reason for the relocation shall be discussed with the resident and, when possible, his legal representative prior to the move.

F. Under emergency conditions, the resident's legal representative, designated contact person, the family, caseworker, social worker or other agency personnel, as appropriate, shall be informed as rapidly as possible, but by the close of the business day following discharge, of the reasons for the move.

G. If the resident's uniform assessment instrument has been completed by a public human services agency assessor, the assisted living facility shall notify such assessor of the date and place ~~of discharge~~ to which the resident moved, as well as when a resident dies, within 10 days of the resident's discharge or death.

H. Discharge statement.

1. At the time of discharge, except as noted in subdivision 2 of this subsection, the assisted living facility shall provide to the resident and, as appropriate, his legal representative and designated contact person a dated statement signed by the licensee or administrator that contains the following information:

a. The date on which the resident, his legal representative or designated contact person was notified of the planned discharge and the name of the legal representative or designated contact person who was notified;

b. The reason or reasons for the discharge;

c. The actions taken by the facility to assist the resident in the discharge and relocation process; and

d. The date of the actual discharge from the facility and the resident's destination.

2. When the termination of care is due to emergency conditions, the dated statement shall contain the above information as appropriate and shall be provided or mailed to the resident, his legal representative, or designated contact person as soon as practicable and within 48 hours from the time of the decision to discharge.

3. A copy of the written statement shall be retained in the resident's record.

I. When the resident is discharged and moves to another caregiving facility, the assisted living facility shall provide to the receiving facility such information related to the resident as is necessary to ensure continuity of care and services. Original information pertaining to the resident shall be maintained by the assisted living facility from which the resident was discharged. The assisted living facility shall maintain a listing of all information shared with the receiving facility.

J. Within 60 days of the date of discharge, each resident or his legal representative shall be given a final statement of account, any refunds due, and return of any money, property or things of value held in trust or custody by the facility.

Part VI
Resident Care and Related Services

22VAC40-72-430. Uniform assessment instrument (UAI).

A. All residents of and applicants to assisted living facilities shall be assessed face-to-face using the uniform assessment instrument pursuant to the requirements in Assessment in ~~Adult Care Residences~~ Assisted Living Facilities (22VAC40-745). Assessments shall be completed prior to admission, annually, and whenever there is a significant change in the resident's condition.

1. For private pay individuals, the UAI shall be completed by one of the following qualified assessors:

a. An assisted living facility staff person who has successfully completed state-approved training on the uniform assessment instrument and level of care criteria

for either public or private pay assessments, provided the administrator or the administrator's designated representative approves and then signs the completed UAI, and the facility maintains documentation of the completed training;

EXCEPTION: An assisted living facility staff person who began employment at the facility prior to December 28, 2006, and who had documented training that was not ~~state-approved~~ state approved in the completion of the UAI and application of level of care criteria shall meet the requirements for ~~state-approved~~ state-approved training within one year from December 28, 2006;

b. An independent physician; or

c. A qualified public human services agency assessor.

2. For public pay individuals, the UAI shall be completed by a case manager or qualified assessor as specified in 22VAC40-745.

B. The UAI shall be completed within 90 days prior to the date of admission to the assisted living facility except that if there has been a change in the resident's condition since the completion of the UAI that would affect the admission, a new UAI shall be completed.

C. When a resident moves to an assisted living facility from another assisted living facility or other long-term care setting that uses the UAI, if there is a completed UAI on record, another UAI does not have to be completed except that a new UAI shall be completed whenever:

1. There is a significant change in the resident's condition~~;~~, or

2. The previous assessment is more than 12 months old.

D. The assessor is responsible for being knowledgeable of the criteria for level of care and authorizing the individual for the appropriate level of care for admission to and for continued stay in an assisted living facility based on the information in the UAI.

E. Annual reassessments and reassessments due to a significant change in the resident's condition, using the UAI, shall be utilized to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interest of the resident.

F. For private pay individuals, the assisted living facility shall ensure that the uniform assessment instrument is completed as required by 22VAC40-745.

G. For a private pay resident, if the UAI is completed by an independent physican or a qualified human services agency assessor, the assisted living facility shall be responsible for coordinating with the physician or the agency assessor to ensure that the UAI is completed as required.

H. The assisted living facility shall be in compliance with all requirements set forth in 22VAC40-745.

I. The facility shall maintain the completed UAI in the resident's record.

J. At the request of the assisted living facility, the resident, the resident's legal representative, the resident's physician, the department, or the local department of social services, an independent assessment using the UAI shall be completed to determine whether the resident's care needs are being met in the assisted living facility. The assisted living facility shall assist the resident in obtaining the independent assessment as requested.

An independent assessment is one that is completed by a qualified entity other than the original assessor.

K. During an inspection or review, staff from the department, the Department of Medical Assistance Services, or the local department of social services may initiate a change in level of care for any assisted living facility resident for whom it is determined that the resident's UAI is not reflective of the resident's current status.

L. The facility shall ensure that facility staff and independent physicians who are qualified assessors advise orally and in writing all applicants to and residents of assisted living facilities of the right to appeal the outcome of the assessment, the annual reassessment, or determination of level of care.

22VAC40-72-440. Individualized service plans.

A. The licensee/administrator who has completed an individualized service plan (ISP) training program approved by the department or his designee who has completed such a program shall develop an individualized service plan to meet the resident's service needs. The licensee/administrator or designee shall develop the ISP in conjunction with the resident, and as appropriate, with the resident's family, legal representative, direct care staff members, case manager, health care providers, qualified mental health professionals, or other persons. The plan shall be designed to maximize the resident's level of functional ability.

An individualized service plan is not required for those residents who are assessed as capable of maintaining themselves in an independent living status.

B. The service plan to address the immediate needs of the resident shall be completed within 72 hours of admission. The comprehensive plan shall be completed within 30 days after admission and shall include the following:

1. Description of identified needs based upon the (i) UAI; (ii) admission physical examination; (iii) interview with resident; (iv) assessment of psychological, behavioral and emotional functioning, if appropriate; and (v) other sources;

2. A written description of what services will be provided and who will provide them;

3. When and where the services will be provided;

4. The expected outcome and date of expected outcome; and

5. If a resident lives in a building housing 19 or fewer residents, a statement that specifies whether the person does need or does not need to have a staff member awake and on duty at night.

C. The individualized service plan shall reflect the resident's assessed needs and support the principles of individuality, personal dignity, freedom of choice and home-like environment and shall include other formal and informal supports that may participate in the delivery of services. Whenever possible, residents shall be given a choice of options regarding the type and delivery of services.

D. When hospice care is provided to a resident, the assisted living facility and the licensed hospice organization shall communicate, establish and agree upon a coordinated plan of care for the resident. The services provided by each shall be included on the individualized service plan.

E. The individualized service plan shall be signed and dated by the licensee/administrator or his designee, i.e., the person who has developed the plan, and by the resident or his legal representative. The plan shall also be signed and dated by any other individuals who contributed to the development of the plan. Each person signing the plan shall note his title or relationship to the resident next to his signature. These requirements shall also apply to reviews and updates of the plan.

EXCEPTION: The signature of an individual who contributed to the plan without being present at the facility shall not be required, although his name, date of participation, and title or relationship shall be indicated on the plan.

F. The master service plan shall be filed in the resident's record. A current copy shall be maintained in a location accessible at all times to direct care staff, but that protects the confidentiality of the contents of the service plan. Extracts from the plan may be filed in locations specifically identified for their retention, e.g., dietary plan in kitchen.

G. The facility shall ensure that the care and services specified in the individualized service plan are provided to each resident.

EXCEPTION: There may be a deviation from the plan when mutually agreed upon between the facility and the resident or the resident's legal representative at the time the care or services are scheduled or when there is an emergency that prevents the care or services from being provided. Deviation from the plan shall be documented in writing, including a description of the circumstances, the date it occurred, and the signatures of the parties involved, and the documentation shall be retained in the resident's record.

The facility may not start, change or discontinue medications, dietary supplements, diets, medical procedures or treatments without an order from a physician or other prescriber.

H. Outcomes shall be noted on the individualized plan or on a separate document as outcomes are achieved, and progress toward reaching expected outcomes shall be noted on the service plan or other document at least annually. Personnel making such notes shall sign and date them.

I. Individualized service plans shall be reviewed and updated at least once every 12 months and as needed as the condition of the resident changes. The review and update shall be performed by a staff person who has completed an ISP training program approved by the department, in conjunction with the resident, and as appropriate, with the resident's family, legal representative, direct care staff, case manager, health care providers, qualified mental health professionals or other persons.

22VAC40-72-630. Medication management plan and reference materials.

A. The facility shall have, and keep current, a written plan for medication management. The facility's medication plan shall address procedures for administering medication and shall include:

1. Methods to ensure an understanding of the responsibilities associated with medication management;

2. Standard operating procedures and any general restrictions specific to the facility;

3. Methods to prevent the use of outdated, damaged or contaminated medications;

4. Methods to ensure that each resident's prescription medications and any over-the-counter drugs and supplements ordered for the resident are filled and refilled in a timely manner to avoid missed dosages;

5. Methods for verifying that medication orders have been accurately transcribed to Medication Administration Records (MARs);

6. Methods for monitoring medication administration and the effective use of the MARs for documentation;

7. Methods to ensure that staff who are responsible for administering medications meet the qualification ~~and training~~ requirements of 22VAC40-72-660;

8. Methods to ensure that staff who are responsible for administering medications are adequately supervised;

9. A plan for proper disposal of medication;

10. Methods to ensure that residents do not receive medications or dietary supplements to which they have known allergies; and

11. Identification of the medication aide or the person licensed to administer drugs responsible for routinely communicating issues or observations related to medication administration to the prescribing physician or other prescriber.

B. The facility's written medication management plan and any subsequent changes shall be approved by the department.

C. The plan and subsequent changes shall be reviewed as part of the department's regular inspection process.

D. In addition to the facility's written medication management plan, the facility shall maintain, as reference materials for medication aides, ~~a current copy of "A Resource Guide for Medication Management for Persons Authorized Under the Drug Control Act," approved by the Virginia Board of Nursing until such time as registration of medication aides is enforced, and~~ at least one pharmacy reference book, drug guide or medication handbook for nurses that is no more than two years old.

22VAC40-72-660. Qualifications~~, training,~~ and supervision of staff administering medications.

When staff administers medications to residents, the following standards shall apply:

1. Each staff person who administers medication shall be authorized by § 54.1-3408 of the Virginia Drug Control Act. All staff responsible for medication administration shall:

a. Be licensed by the Commonwealth of Virginia to administer medications~~;~~. or

b. ~~(i) Have successfully completed one of the five requirements specified in 22VAC40-72-250 C 1 through 5 and (ii) have successfully completed the medication training program developed by the department and approved by the Board of Nursing~~ Be registered with the Virginia Board of Nursing as a medication aide.

~~EXCEPTION: Staff responsible for medication administration prior to December 28, 2006, who would otherwise be subject to completion of one of the five requirements specified in 22VAC40-72-250 C 1 through 5 do not have to meet any of the requirements listed in 22VAC40-72-250 C 1 through 5 in order to administer medication.~~

~~2. All staff who have met the requirements of subdivision 1 b of this section shall be listed in the department's database for medication aides.~~

~~3. All staff who have successfully completed the medication training program approved by the Board of Nursing shall also successfully complete:~~

~~a. Annual in-service training provided by a licensed health care professional, acting within the scope of the requirements of his profession, on side effects of the medications prescribed to the residents in care and on recognizing and reporting adverse medication reactions.~~

~~b. The most current refresher course developed by the department that is based on the curriculum approved by the Board of Nursing. The refresher course shall be completed every three years.~~

~~4.~~ 2. Medication aides shall be supervised by:

a. ~~A licensed health care professional, acting within the scope of the requirements of his profession~~ An individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications;

b. The administrator who is licensed by the Commonwealth of Virginia to administer medications or who has successfully completed ~~the medication~~ a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training, but need not include the prerequisite for the program or the written examination for registration; or

c. ~~The~~ For facilities licensed for residential living care only, the designated assistant administrator, ~~who meets the qualifications of the administrator~~ as specified in 22VAC40-72-201 D, who is licensed by the Commonwealth of Virginia to administer medications or who has successfully completed ~~the medication~~ a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for designated assistant administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training, but need not include the prerequisite for the program or the written examination for registration.

22VAC40-72-670. Administration of medications and related provisions.

A. ~~Drugs shall be administered~~ Staff who are licensed or registered as specified in 22VAC40-72-660 shall administer drugs to those residents who are dependent in medication administration as documented on the UAI.

B. All medications shall be removed from the pharmacy container by ~~an authorized~~ a staff person licensed or registered as specified in 22VAC40-72-660 and administered

by the same ~~authorized~~ staff person not earlier than one hour before and not later than one hour after the facility's standard dosing schedules, except those drugs that are ordered for specific times, such as before, after or with meals. Pre-pouring for later administration is not permitted.

C. All medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent with the standards of practice outlined in the current registered medication aide curriculum approved by the Virginia Board of Nursing.

D. All medications shall remain in the pharmacy issued container, with the legible prescription label or direction label attached, until administered.

E. Sample medications shall remain in the original packaging, labeled by a physician or other prescriber or pharmacist with the resident's name, the name of the medication, the strength, dosage, route and frequency of administration, until administered.

F. Over-the-counter medication shall remain in the original container, labeled with the resident's name, or in a pharmacy-issued container, until administered.

G. In the event of an adverse drug reaction or a medication error:

1. First aid shall be administered as directed by a physician, pharmacist or the Virginia Poison Control Center.

2. The resident's physician of record shall be notified as soon as possible.

3. The direct care staff person shall document actions taken in the resident's record.

H. The facility shall document on a medication administration record (MAR) all medications administered to residents, including over-the-counter medications, and dietary supplements. The MAR shall include:

1. Name of the resident;

2. Date prescribed;

3. Drug product name;

4. Strength of the drug;

5. Dosage;

6. Diagnosis, condition, or specific indications for administering the drug or supplement;

7. Route (for example, by mouth);

8. How often medication is to be taken;

9. Date and time given and initials of direct care staff administering the medication;

10. Dates the medication is discontinued or changed;

11. Any medication errors or omissions;

12. Description of significant adverse effects suffered by the resident;

13. For PRN medications:

a. Symptoms for which medication was given;

b. Exact dosage given; and

c. Effectiveness; and

14. The name, signature and initials of all staff administering medications.

I. The performance of all medical procedures and treatments ordered by a physician or other prescriber shall be documented and the documentation shall be retained in the resident's record.

J. The use of PRN (as needed) medications is prohibited, unless one or more of the following conditions exist:

1. The resident is capable of determining when the medication is needed;

2. Licensed health care professionals are responsible for medication administration and management; or

3. The facility has obtained from the resident's physician or other prescriber detailed written instructions or a staff person as allowed in 22VAC40-72-640 D has telephoned the physician or other prescriber prior to administering the medication, explained the symptoms and received a documented oral order to assist the resident in self-administration. The physician's or other prescriber's instructions shall include symptoms that might indicate the use of the medication, exact dosage, the exact ~~timeframes~~ time frames the medication is to be given in a 24-hour period, and directions as to what to do if symptoms persist.

K. Medications ordered for PRN administration shall be available, properly labeled for the specific resident and properly stored at the facility.

L. Stat-drug boxes may only be used when the following conditions are met:

1. There is an order from the prescriber for any drug removed from the stat-drug box; and

2. The drug is removed from the stat-drug box and administered by a nurse, pharmacist or prescriber licensed to administer medications.

A stat-drug box may be prepared by a pharmacy prior to the receipt of ordered drugs from the pharmacy. Stat-drug boxes are subject to the conditions specified in 18VAC110-20-550 of the Virginia Board of Pharmacy.

22VAC40-72-910. Provisions for signaling/call systems.

A. All assisted living facilities shall have a signaling device that is easily accessible to the resident in his bedroom or in a connecting bathroom that alerts the direct care staff that the resident needs assistance.

B. In ~~facilities~~ buildings licensed to care for 20 or more residents under one roof, there shall be a signaling device that terminates at a central location that is continuously staffed and permits staff to determine the origin of the signal or is audible and visible in a manner that permits staff to determine the origin of the signal.

C. In ~~facilities~~ buildings licensed to care for 19 or fewer residents under one roof, if the signaling device does not permit staff to determine the origin of the signal as specified in subsection B of this section, direct care staff shall make rounds at least once each hour to monitor for emergencies or other unanticipated resident needs. These rounds shall begin when the majority of the residents have gone to bed each evening and shall terminate when the majority of the residents have arisen each morning, and shall be documented as follows:

1. A written log shall be maintained showing the date and time rounds were made and the signature of the direct care staff member who made rounds.

2. Logs for the past two years shall be retained.

22VAC40-72-920. Fire safety: compliance with state regulations and local fire ordinances.

A. An assisted living facility shall comply with the Virginia Statewide Fire Prevention Code (13VAC5-51) as determined by at least an annual inspection by the appropriate fire official. Reports of the ~~annual~~ inspections shall be retained at the facility for at least two years.

B. An assisted living facility shall comply with any local fire ordinance.

Part IX
Emergency Preparedness

22VAC40-72-930. Emergency preparedness and response plan.

A. The facility shall develop a written emergency preparedness and response plan that shall address:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks, (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency.

2. Analysis of the facility's potential hazards, including severe weather, fire, loss of utilities, flooding, work place violence or terrorism, severe injuries, or other emergencies that would disrupt normal operation of the facility.

3. Written emergency management policies outlining specific responsibilities for provision of:

a. Administrative direction and management of response activities;

b. Coordination of logistics during the emergency;

c. Communications;

d. Life safety of residents, staff, volunteers, and visitors;

e. Property protection;

f. Continued provision of services to residents;

g. Community resource accessibility; and

h. Recovery and restoration.

4. Written emergency response procedures for assessing the situation; protecting residents, staff, volunteers, visitors, equipment, medications, and vital records; and restoring services. Emergency procedures shall address:

a. Alerting emergency personnel and facility staff;

b. Warning and notification of residents, including sounding of alarms when appropriate;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations and sheltering in place, as appropriate, and accounting for all residents;

e. Locating and shutting off utilities when necessary;

f. Maintaining and operating emergency equipment effectively and safely;

g. Communicating with staff and community emergency responders during the emergency; and

h. Conducting relocations to emergency shelters or alternative sites when necessary and accounting for all residents.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, memoranda of understanding with relocation sites, and list of major resources such as suppliers of emergency equipment.

B. Staff and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

C. The facility shall develop and implement an orientation and quarterly review on the emergency preparedness and response plan for all staff, residents, and volunteers. The orientation and review shall cover responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation, shelter in place, and relocation procedures;

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency medical information, equipment, and medications for residents;

5. Locating and shutting off utilities; and

6. Utilizing community support services.

D. The facility shall review the emergency preparedness plan annually or more often as needed and make necessary revisions. Such revisions shall be communicated to staff, residents, and volunteers and incorporated into the orientation and quarterly review for staff, residents, and volunteers.

E. In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety and welfare of residents, the facility shall take appropriate action to protect the health, safety and welfare of the residents and take appropriate actions to remedy the conditions as soon as possible.

F. After the disaster/emergency is stabilized, the facility shall:

1. Notify family members and legal representatives~~;~~, and

2. Report the disaster/emergency to the regional licensing office by the next working day as specified in 22VAC40-72-100.

22VAC40-72-950. Fire and emergency evacuation drills.

A. Fire and emergency evacuation drill frequency and participation shall be in accordance with the current edition of the Virginia Statewide Fire Prevention Code (13VAC5-51). The drills required for each shift in a quarter shall not be conducted in the same month.

B. Additional fire and emergency evacuation drills may be held at the discretion of the administrator or licensing inspector and must be held when there is any reason to question whether the requirements of the approved fire and emergency evacuation plan can be met.

C. Each required fire and emergency evacuation drill shall be unannounced.

D. Immediately following each required fire and emergency evacuation drill, there shall be an evaluation of the drill by the staff in order to determine the effectiveness of the drill. The licensee or administrator shall immediately correct any problems identified in the evaluation.

E. A record of the required fire and emergency evacuation drills shall be kept in the facility for two years. Such record shall include:

1. Identity of the person conducting the drill;

~~1.~~ 2. The date and time of the drill;

3. The method used for notification of the drill;

~~2.~~ 4. The number of staff participating;

~~3.~~ 5. The number of residents participating;

6. Any special conditions simulated;

~~4.~~ 7. The time it took to complete the drill;

~~5.~~ 8. Weather conditions; and

~~6.~~ 9. Problems encountered, if any.

22VAC40-72-960. Emergency equipment and supplies.

A. A complete first aid kit shall be on hand at the facility, located in a designated place that is easily accessible to staff but not to residents. Items with expiration dates must not have dates that have already passed. The kit shall include, but not be limited to, the following items:

1. Activated charcoal (use only if instructed by physician or Poison Control Center);

2. Adhesive tape;

3. Antiseptic ointment;

4. Band-aids (assorted sizes);

5. Blankets (disposable or other);

6. Disposable single use breathing barriers/shields for use with rescue breathing or CPR (CPR mask or other type);

7. Cold pack;

8. Disposable single use waterproof gloves;

9. Gauze pads and roller gauze (assorted sizes);

10. Hand cleaner (e.g., waterless hand sanitizer or antiseptic towelettes);

11. Plastic bags;

12. Scissors;

13. Small flashlight and extra batteries;

~~14. Syrup of ipecac (use only if instructed by physician or Poison Control Center);~~

~~15.~~ 14. Thermometer;

~~16.~~ 15. Triangular bandages;

~~17.~~ 16. Tweezers; and

~~18.~~ 17. The first aid instructional manual.

~~Items with expiration dates must not have dates that have already passed.~~

B. In facilities that have a motor vehicle that is used to transport residents and in a motor vehicle used for a field trip, there shall be a first aid kit on the vehicle, located in a designated place that is accessible to staff but not residents, that includes items as specified in subsection A of this section.

C. First aid kits shall be checked at least monthly to assure that all items are present and items with expiration dates are not past their expiration date.

D. Each facility with six or more residents shall be able to connect ~~by July 1, 2007,~~ to a temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. The installation of a connection for temporary electric power shall be in compliance with the Virginia Uniform Statewide Building Code, 13VAC5-63.

E. The following emergency lighting shall be available:

1. Flashlights or battery lanterns for general use.

2. One flashlight or battery lantern for each employee directly responsible for resident care who is on duty between 5 p.m. and 7 a.m.

3. One flashlight or battery lantern for each bedroom used by residents and for the living and dining area unless there is a provision for emergency lighting in the adjoining hallways.

4. The use of open flame lighting is prohibited.

F. There shall be an alternative form of communication in addition to the telephone such as a cell phone, two-way radio, or ham radio.

G. The facility shall ensure the availability of a 96-hour supply of emergency food and drinking water, and oxygen for residents using oxygen.

22VAC40-72-970. Plan for resident emergencies and practice exercise.

A. Assisted living facilities shall have a written plan for resident emergencies that includes:

1. Procedures for handling medical emergencies including identifying the staff person responsible for (i) calling the rescue squad, ambulance service, resident's physician, or Poison Control Center, and (ii) providing first aid and CPR, when indicated.

2. Procedures for handling mental health emergencies such as, but not limited to, catastrophic reaction or the need for a temporary detention order.

3. Procedures for making pertinent medical information and history available to the rescue squad and hospital, including but not limited to information on medications and any advance directives.

4. Procedures to be followed in the event that a resident is missing, including but not limited to (i) involvement of facility staff, appropriate law-enforcement agency, and others as needed; (ii) areas to be searched; (iii) expectations upon locating the resident; and (iv) documentation of the event.

5. Procedures for notifying the resident's family, legal representative, designated contact person, and any responsible social agency.

6. Procedures for notifying the <u>regional</u> licensing office as specified in 22VAC40-72-100.

B. At least once every six months, all staff on each shift shall participate in an exercise in which the procedures for resident emergencies are practiced. Documentation of each exercise shall be maintained in the facility for at least two years.

C. The plan for resident emergencies shall be readily available to all staff.

22VAC40-72-1010. Staff training.

A. Commencing immediately upon employment and within three months, the administrator shall attend 12 hours of training in cognitive impairment that meets the requirements of subsection C of this section. This training is counted toward the annual training requirement for the first year<u>, except that for licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements</u>. Previous training that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required 12 hours but not toward the annual training requirement<u>, except as noted earlier in this subsection</u>.

B. Commencing immediately upon employment and within four months, direct care staff shall attend four hours of training in cognitive impairment that meets the requirements of subsection C of this section. This training is counted toward meeting the annual training requirement for the first year. Previous training that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required four hours but not toward the annual training requirement.

C. Curriculum for the training in cognitive impairment for direct care staff and administrators shall be developed by a qualified health professional or by a licensed social worker, shall be relevant to the population in care and shall include, but need not be limited to:

1. Explanation of cognitive impairments;

2. Resident care techniques;

3. Behavior management;

4. Communication skills;

5. Activity planning; and

6. Safety considerations.

D. Within the first month of employment, staff other than the administrator and direct care staff shall complete one hour of training on the nature and needs of residents with cognitive impairments relevant to the population in care.

22VAC40-72-1120. Staff training.

A. Commencing immediately upon employment and within two months, the administrator and direct care staff shall attend at least four hours of training in cognitive impairments due to dementia. This training is counted toward meeting the annual training requirement for the first year, except that for licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements. The training shall cover the following topics:

1. Information about the cognitive impairment, including areas such as cause, progression, behaviors, management of the condition;

2. Communicating with the resident;

3. Managing dysfunctional behavior; and

4. Identifying and alleviating safety risks to residents with cognitive impairment.

Previous training that meets the requirements of this subsection and subsections C and D of this section that was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required four hours but not toward the annual training requirement, except as noted earlier in this subsection. In this subsection, for direct care staff, employment means employment in the safe, secure environment.

B. Within the first year of employment, the administrator and direct care staff shall attend at least six more hours of training, in addition to that required in subsection A of this section, in caring for residents with cognitive impairments due to dementia. The training is counted toward meeting the annual training requirement for the first year, except that for licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements. The training shall cover the following topics:

1. Assessing resident needs and capabilities and understanding and implementing service plans;

2. Resident care techniques for persons with physical, cognitive, behavioral and social disabilities;

3. Creating a therapeutic environment;

4. Promoting resident dignity, independence, individuality, privacy and choice;

5. Communicating with families and other persons interested in the resident;

6. Planning and facilitating activities appropriate for each resident; and

7. Common behavioral problems and behavior management techniques.

Previous training that meets the requirements of this subsection and subsections C and D of this section that was completed in the year prior to employment is transferable if there is documentation of the training. The documented previous training is counted toward the required six hours but not toward the annual training requirement, except as noted earlier in this subsection. In this subsection, for direct care staff, employment means employment in the safe, secure environment.

C. The training required in subsections A and B of this section shall be developed by:

1. A licensed health care professional acting within the scope of the requirements of his profession who has at least 12 hours of training in the care of individuals with cognitive impairments due to dementia; or

2. A person who has been approved by the department to develop the training.

D. The training required in subsections A and B of this section shall be provided by a person qualified under subdivision C 1 of this section or a person who has been approved by the department to provide the training.

E. Within the first month of employment, staff, other than the administrator and direct care staff, who will have contact with residents in the special care unit shall complete one hour of training on the nature and needs of residents with cognitive impairments due to dementia.

VA.R. Doc. No. R09-1523; Filed December 3, 2008, 10:54 a.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Fast-Track Regulation

Title of Regulation: **23VAC10-20. General Provisions Applicable to All Taxes Administered by the Department of Taxation (amending 23VAC10-20-160, 23VAC10-20-180, 23VAC10-20-190; adding 23VAC10-20-165; repealing 23VAC10-20-170).**

Statutory Authority: § 58.1-203 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 February 20, 2009.

Effective Date: March 8, 2009.

Agency Contact: Jennifer Lewis, Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2341 or FAX (804) 371-2355.

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose: The purpose of this regulatory action is to create a new regulation section, 23VAC10-20-165, concerning administrative appeals that will give TAX's current policy the authority of a regulation. This regulatory action will also repeal 23VAC10-20-170, which is being superceded by the new regulation section. Additionally, this regulatory action will amend 23VAC10-20-160 to reference the new regulation section and remove overlapping information about administrative appeals. TAX will also move some language from 23VAC10-20-160, which will be placed in 23VAC10-20-165, 23VAC10-20-180 and 23VAC10-20-190.

A regulation section on administrative appeals will facilitate a predictable and adequate revenue stream for the government to provide for the health, safety, and welfare of its citizens by clearly stating TAX's policy concerning administrative appeals.

Rationale for Using Fast-Track Process: As the new regulation section will not make any substantive changes to TAX's current administrative appeals process and existing policies related to the process, this action is not expected to be controversial.

When the Administrative Appeals Guidelines set forth in Public Document 06-140 were created, TAX met with the Virginia Society of Certified Public Accountants (VSCPA). TAX and VSCPA both agreed on the guidelines before completion. The Virginia Bar Association Tax Section was also given access to the document for review.

Substance: This action will codify in the Virginia Administrative Code TAX's current policy on appeals as set forth in Public Document 06-140. Creating a new regulation section on administrative appeals will help maximize knowledge of the process among taxpayers.

23VAC10-20-160 will be amended to reference the new regulation section and remove overlap information about administrative appeals. TAX will also remove some language from 23VAC10-20-160, which will be placed in 23VAC10-20-165, 23VAC10-20-180 and 23VAC10-20-190. 23VAC10-20-170 will be repealed because it is superceded by the new regulation section, 23VAC10-20-165.

Issues: The regulatory action poses no disadvantages to the public or the Commonwealth. The primary advantage to the public and to the Commonwealth is that by detailing the administrative appeals process, the public will better understand the process and the options available to them. The regulation section will facilitate the appeals process for both the agency and the taxpayer.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (Department) currently provides guidance to the public on how to appeal tax assessments within a document titled "Administrative Appeal Guidelines for Tax Assessments Issued by the Virginia Department of Taxation." The Guidelines were created to supplement Code of Virginia § 58.1-1821 and these regulations (23VAC10-20, General Provisions Applicable to All Taxes Administered by the Department of Taxation). The Department now proposes to incorporate the Guidelines into the regulations and to eliminate duplicate language and reorganize the content of some related regulation sections.

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

Estimated Economic Impact. Since the Guidelines are not more restrictive than the Code of Virginia and placing the Guidelines within the regulations may make it easier for taxpayers who are aware of the regulations but not the Guidelines to determine how and when their appeals should be filed, the proposal should provide benefit to the public with no associated cost.

Businesses and Entities Affected. These regulations potentially affect all Virginia taxpayers.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

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 proposal to incorporate the Guidelines within the regulations may save a small amount of time for small business owners who wish to appeal tax assessments.

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.

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

Summary:

This regulatory action will promulgate a new regulation section, 23VAC10-20-165, setting forth TAX's administrative appeals process and procedures as outlined in Public Document 06-140 issued by TAX on November 29, 2006. This regulatory action will also repeal 23VAC10-20-170, which is superceded by the new regulation section. 23VAC10-20-165 will turn the current process as detailed by Public Document 06-140 into a regulation section.

Additionally, this regulatory action will amend 23VAC10-20-160 to reference the new regulation section and remove overlapping information about administrative appeals. TAX will also move some language from 23VAC10-20-160, which will be placed in 23VAC10-20-165, 23VAC10-20-180, and 23VAC10-20-190.

23VAC10-20-160. ~~In general; definitions~~ Assessments and administrative remedies.

A. Types of remedies. Article 2 (§ 58.1-1820 et seq.) of Chapter 18 of Title 58.1 of the Code of Virginia provides several administrative and judicial remedies for taxpayers who believe an assessment to be erroneous. In addition, ~~Va. Code~~ § 58.1-105 of the Code of Virginia authorizes the Tax Commissioner to accept an offer in compromise in certain circumstances. The various remedies available for taxes administered by the department may be summarized as follows:

1. Offer in compromise under § 58.1-105 of the Code of Virginia, which may be used to waive or compromise a penalty for good cause or to compromise a tax based on a doubtful or disputed claim or a liability of doubtful collectibility.

2. Application for correction of an erroneous assessment under § 58.1-1821 of the Code of Virginia before payment of the assessment, which may be used to protest any or all issues connected with an assessment. See 23VAC10-20-165 for the full explanation of the administrative appeals process.

3. Amended return claiming a refund under § 58.1-1823 of the Code of Virginia, which may be used to amend a return based upon new or newly discovered facts such as errors discovered in the original return or a change in federal taxable income.

4. Protective claim under § 58.1-1824 of the Code of Virginia after payment of the assessment, which may be used to protest any or all issues connected with an assessment and, in certain circumstances, may extend the time in which taxpayer may apply to a court. See 23VAC10-20-190 for more information on protective claims.

5. If the above administrative remedies are not satisfactory to the taxpayer, ~~the assessment may be paid and~~ an application to a court may be made under § 58.1-1825 of the Code of Virginia.

B. Exhaustion of administrative remedies. Although not required by law, taxpayers are encouraged to exhaust their administrative remedies before resorting to litigation. Administrative reviews remain confidential pursuant to §§ 58.1-3 and 58.1-204 of the Code of Virginia. Even if a dispute cannot be resolved administratively, the issues in

dispute may be significantly narrowed allowing expeditious court review.

~~C. Forms.~~

~~1. There is no form for applications for correction of assessments or protective claims but the information required for both is similar. The Department will accept any submission which sufficiently identifies the taxpayer, type of tax, taxable period, remedy sought, date of assessment and, if paid, the date of payment, and a statement signed by the taxpayer or duly appointed or authorized agent or attorney setting forth each alleged error in the assessment, the grounds upon which taxpayer relies and all facts relevant to taxpayer"s contention.~~

~~2. When a dealer is applying for a refund of sales tax, the dealer shall attach a list of the purchasers from whom the tax was collected and to whom the refund and interest, if allowed, will be paid.~~

~~3. When a consumer is applying for a refund of sales or use tax assessed against a dealer or contractor, the consumer shall identify the dealer or contractor, explain the circumstances surrounding the payment by the consumer and explain why the claim for refund could not, or would not, be made by the dealer or contractor.~~

~~4. An application for correction or a protective claim filed on behalf of a taxpayer by an attorney, accountant or tax preparer must be signed by the taxpayer or accompanied by a duly executed power of attorney in favor of such representative who signs the application or claim.~~

~~D.~~ C. Person assessed. Any person assessed with any tax, as such term is defined in § 58.1-1820(1) of the Code of Virginia, may file an application for correction or a protective claim.

~~E.~~ D. ~~Definition of assessment~~ Assessments.

1. When referring to taxes administered by the ~~Department~~ department, the terms "assess" and "assessment" mean the act of determining that a tax (or additional tax) is due and the amount of such tax. An assessment may be made by the ~~Department~~ department or by the taxpayer (self-assessment).

2. When an assessment is made by the ~~Department~~ department, a written notice of the assessment must be delivered to the taxpayer by an employee of the ~~Department~~ department or mailed to the taxpayer at his last known address. The date that such notice is mailed or delivered is the date of the assessment for the purpose of any limitations on the time in which administrative and judicial remedies are available and for any other administrative purposes.

3. The written notice of an assessment made by the ~~Department~~ department is made on a form clearly labeled "Notice of Assessment" ~~which~~ that sets forth the date of the assessment, amount of assessment, the tax type, taxable period and taxpayer. Subsequent statements ~~which~~ that merely report payments and additional accrued interest are not assessments or notices of another assessment. An assessment may be preceded by correspondence proposing adjustments to a filed return based on an audit or other information received by the ~~Department~~ department. Such correspondence is not an assessment but is intended to provide taxpayers an opportunity to correct any errors before an assessment is made.

4. A self-assessment is usually made when the taxpayer files a return. If an annual, quarterly or monthly return is not required to be filed for a tax then the self-assessment is usually made when the tax is paid. The date of assessment is the date of filing or payment except that:

a. A return filed or tax paid before the last day prescribed by law for the filing or payment thereof, including extensions granted pursuant to law, shall be deemed to be filed or paid on such last day.

b. After the ~~Department~~ department has mailed or delivered a notice of assessment a return filed or tax paid shall be deemed filed or paid pursuant to the notice. Such filing or payment is not a self assessment. The date of assessment shall be the date the notice of assessment was mailed or delivered, not the date the return was filed or the tax paid.

c. In certain circumstances the date a return or payment is mailed will be deemed the date of filing or payment. See ~~Va. Code~~ § 58.1-9 of the Code of Virginia.

5. A jeopardy assessment under ~~§§~~ § 58.1-313 or 58.1-631 of the Code of Virginia occurs when the Tax Commissioner finds that collection of income, sales or use taxes will be jeopardized by delay, terminates the current taxable period and assesses tax, penalty and interest. A jeopardy assessment is an assessment for purposes of administrative remedies and a taxpayer may protest either the finding of jeopardy or the amount of liability, or both.

6. The date of an assessment is not affected if the amount of the assessment is later corrected, whether the correction is the result of an application under ~~§§~~ § 58.1-1821 or 58.1-1824 of the Code of Virginia or made on the ~~Department's~~ department's own initiative after receiving additional information. The ~~Department~~ department will not correct an assessment by increasing the amount of liability (except for additional accrued interest). If the ~~Department~~ department determines that the proper tax is greater than the amount previously assessed and paid, the ~~Department~~ department will make a second assessment unless the period for assessing additional tax has expired. The second assessment may be for the total amount due (in which case the first assessment will be abated) or for only

that portion of the tax due ~~which~~ that has not yet been assessed, whichever is appropriate in the opinion of the ~~Department~~ department.

7. Amended returns claiming refunds under ~~Va. Code~~ § 58.1-1823 of the Code of Virginia are not assessments or self-assessments. However, for the purpose of allowing a taxpayer to pursue administrative and judicial remedies, the denial or failure to act upon a refund claim is deemed to be an assessment, but only as to matters first raised in the amended return claiming a refund. A matter shall not be considered first raised in an amended return claiming a refund if it was previously the subject of an audit or an application under ~~§§~~ § 58.1-1821, 58.1-1824 or 58.1-1825 of the Code of Virginia. The date of such deemed assessment shall be the date of an order of the ~~Department~~ department denying the refund claim or three months from the date the amended return was filed with the ~~Department~~ department, whichever is earlier.

23VAC10-20-165. Administrative appeals.

A. Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

"Administrative appeal" means an application for correction of an assessment filed with the Tax Commissioner pursuant to § 58.1-1821 of the Code of Virginia.

"Assessment" means a determination of the amount of tax, including additional or omitted tax, that is due. An assessment includes a written assessment made pursuant to a notice by the department or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. A return filed or tax paid before the last day prescribed by law for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be. The denial of a refund claim is deemed to be an assessment, and a taxpayer may file an administrative appeal in response to the denial of a refund claim.

"Collection action" means the use of any means permitted by law, direct or indirect, by the department, or collection agencies authorized by the department, to obtain payment on an assessment.

"Complete appeal" means an administrative appeal containing sufficient information, as prescribed in subsection D of this section, so that the grounds upon which the taxpayer relies in contesting an assessment are fully set forth to allow the Tax Commissioner to make an informed final determination.

"Date of assessment" means, for purposes of filing an administrative appeal, the date stated on the notice of assessment. In the case of a denial of a refund claim, the date of assessment is the date of the department's correspondence informing the taxpayer that the refund claim is denied. If the department fails to act within three months on an amended return claiming a refund, the date of assessment is the day following the expiration of the three-month period for the purpose of permitting the taxpayer to pursue an administrative appeal under § 58.1-1821 of the Code of Virginia.

"Department" means the Virginia Department of Taxation and its employees.

"Determination" means the Tax Commissioner's written final determination issued pursuant to § 58.1-1822 of the Code of Virginia to a taxpayer's administrative appeal. A determination also includes the Tax Commissioner's written response to a request for reconsideration pursuant to subsection F of this section, except as provided in subdivision F 5 of this section.

"Notice of assessment" means the department's official form labeled "Notice of Assessment" that contains written information that sets out the date of the assessment, amount of assessment, the tax type, taxable period, account number, bill number and name of the taxpayer. A subsequent statement of balance due the department does not constitute a new notice of assessment. Such subsequent statements include reports of payments applied to assessments, updated bills reflecting additional accrued interest, or other changes to an assessment. A notice of assessment may be preceded by correspondence proposing adjustments to a filed return based on an audit or other information received by the department. Such correspondence is not a notice of assessment but is intended to provide taxpayers an opportunity to correct any errors before an assessment is made.

"Notice of intent to appeal" means a taxpayer's written statement filed with the department that informs the department of a taxpayer's intent to file an administrative appeal of an assessment to the Tax Commissioner.

"Tax Commissioner" means the chief executive officer of the Department of Taxation.

"Taxpayer" means a person, corporation, partnership, limited liability company, organization, trust or estate or other entity subject to the taxes administered by the Department of Taxation.

B. Administrative appeal process.

1. Taxpayer appeal rights.

a. Section 58.1-1821 of the Code of Virginia gives a taxpayer the right to an administrative appeal of an assessment issued by the Department of Taxation, if the taxpayer believes that the department has incorrectly assessed tax, penalty or interest. The administrative appeal must include all elements listed in subsection D of this section.

b. The department strictly enforces the 90-day limitations period for filing a timely administrative appeal. A taxpayer must file a complete appeal within 90 calendar days after the date of assessment. See subsection C of this section for computing the 90-day limitations period.

c. A taxpayer is not required to pay the portion of an assessment that is the subject of an administrative appeal until the Tax Commissioner has issued a determination that requires such payment unless the Tax Commissioner determines collection is in jeopardy.

d. An administrative appeal may be filed with the department by hand delivery, email, common carrier, delivery service, United States mail, facsimile transmission or by any other means that ensures the filing of a complete appeal to the department within the 90-day limitations period.

e. The department will determine the manner best suited to resolve an appeal, which may include submission of additional documents and memoranda, further audit, holding a conference with the taxpayer or the taking of testimony.

f. An administrative appeal of an assessment filed pursuant to § 58.1-1821 of the Code of Virginia is not subject to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

g. An application under § 58.1-1821 of the Code of Virginia does not extend the period in which a taxpayer may apply to a court under § 58.1-1825 of the Code of Virginia. See 23VAC10-20-190 C.

2. Collection action.

a. Upon receipt of a complete appeal or a notice of intent to appeal within the 90-day limitations period, the department will suspend collection action on the contested assessment unless the Tax Commissioner determines collection of the assessment is in jeopardy.

b. When a notice of intent to appeal is filed and a complete appeal is not filed within the 90-day limitations period, the suspension of collection will be released, and collection action will resume.

c. After the Tax Commissioner has made a determination on the application, the assessment, as it may have been modified by such determination, shall become immediately collectible with accrued interest.

3. Accrual of interest.

a. While the taxpayer's administrative appeal is pending, interest will accrue on any outstanding balance pursuant to § 58.1-1812 of the Code of Virginia. To avoid the accrual of additional interest, the taxpayer may choose to make full payment of the assessment. Payment of any disputed tax, penalty, or interest shall not be construed to mean that the taxpayer is in agreement with the assessment.

b. If the taxpayer decides to make full payment and the final determination results in a refund, the taxpayer will be paid interest on the overpayment of the erroneously assessed tax pursuant to § 58.1-1833 of the Code of Virginia.

4. Acknowledgement letter.

a. The taxpayer will receive an acknowledgement letter from the department once the administrative appeal or a notice of intent to appeal has been received. The acknowledgement letter sent by the department after an appeal is filed will provide the taxpayer with the name and phone number of the analyst assigned to review the appeal.

b. The acknowledgement letter serves only to indicate receipt of the taxpayer's administrative appeal by the department. It does not acknowledge whether the administrative appeal is complete or whether the appeal was timely filed.

c. If it is determined that the taxpayer has not filed a complete appeal, the analyst assigned to the appeal will notify the taxpayer in separate correspondence.

5. Power of attorney.

a. An administrative appeal filed on behalf of a taxpayer by an attorney, accountant, tax preparer, or other representative of the taxpayer should be accompanied by a properly executed power of attorney. The power of attorney must be signed and dated by both the taxpayer and the taxpayer's representative(s).

b. A power of attorney must be filed if the taxpayer will be represented in a taxpayer conference with the department by an attorney, accountant, tax preparer, or other representative, and a power of attorney has not been previously filed with the department with regard to the administrative appeal.

c. Form PAR 101, Power of Attorney and Declaration of Representative can be found on the department's website. Form PAR 101 or any other power of attorney form that includes the same information will be accepted by the department.

d. Failure to provide a power of attorney within the 90-day limitations period does not preclude consideration of the administrative appeal; however, it may delay the issuance of the final determination.

6. Tax Commissioner's determination. The Tax Commissioner will issue a determination letter in response to the taxpayer's administrative appeal. The determination will be based on the issues raised in the taxpayer's administrative appeal.

C. Time for filing an administrative appeal. Section 58.1-1821 of the Code of Virginia provides that a taxpayer assessed with any tax administered by the department may, within 90 calendar days after the date of such assessment, file an administrative appeal with the Tax Commissioner.

1. The 90-day limitations period begins on the calendar day after the date of assessment and continues for 90 consecutive calendar days (including weekends and holidays).

2. Regardless of the delivery method used, if the 90th calendar day after the date of assessment is a Saturday, Sunday, federal holiday or Virginia state holiday, the administrative appeal will be considered timely if filed on the Commonwealth's next business day.

3. An administrative appeal that is delivered to the department using the United States mail must be postmarked or have a metered date that is on or before the 90th calendar day after the date of assessment to be considered timely filed. The department will use the United States mail postmark in cases where there is both a postmark date and a metered date on the administrative appeal. In the case of metered mail not bearing a United States mail postmark, an appeal or a request for redetermination will be deemed to be filed untimely if:

a. The metered date is missing from the metered imprint and the item is received by the department more than three business days after the last day for filing the appeal or a request for redetermination; or

b. The metered date is present bearing a timely date for the filing, but the filing is received by the department more than 10 business days after the last day for filing, in which case it is presumed that the metered date does not accurately reflect the date on which the filing was deposited with the United States Postal Service.

4. An administrative appeal that is delivered to the department by hand, by common carrier or delivery service, facsimile transmission, electronic mail (email) or any means of delivery other than by United States mail, must be dated and received on or before the 90th calendar day after the date of assessment to be considered timely filed, except as noted below.

a. An administrative appeal delivered by hand will be date-stamped by an employee of the department on the day received. This date will be the filing date for purposes of determining if the administrative appeal is filed within the 90-day limitations period.

b. The date of receipt by the carrier or delivery service shown on the shipping or address label or elsewhere on the envelope or package delivered to the department by common carrier or delivery service will be the filing date of the administrative appeal for purposes of determining if the administrative appeal is filed within the 90-day limitations period.

c. The most recent date printed on a facsimile transmission or shown on an email transmission will be the filing date of the administrative appeal for purposes of determining if the administrative appeal is filed within the 90-day limitations period unless, for whatever reason, that date is patently inconsistent with the date actually received by the department.

d. An administrative appeal received by the department via hand delivery, in an envelope or package, by facsimile transmission, by email, or by any other means of delivery bearing no legible date will be considered filed on the date of actual receipt by the department.

5. Examples of the 90-day limitations period for administrative appeals.

Example 1. The department issues Taxpayer A a notice of assessment with an assessment date of February 28, 2006. Taxpayer A files an administrative appeal with the Tax Commissioner by United States mail. The 90-day limitations period to file an administrative appeal starts on March 1, 2006, the first calendar day after the date of assessment. The 90th day after the date of assessment falls on May 29, 2006, which is a state holiday. Taxpayer A's administrative appeal will be considered timely filed if postmarked on or before May 30, 2006, the next business day following a state holiday.

Example 2. The department issues Taxpayer B a notice of assessment with an assessment date of March 13, 2006. The 90-day limitations period to file an administrative appeal starts on March 14, 2006. The 90th day after the date of assessment falls on June 11, 2006, which is a Sunday. Taxpayer B's administrative appeal will be considered timely filed if it is emailed to the department on or before June 12, 2006.

Example 3. The department issues Taxpayer C a notice of assessment with an assessment date of May 2, 2006. The department later sends Taxpayer C a statement dated June 5, 2006, showing that the original assessment remains outstanding and that additional interest has accrued on the assessment. The 90-day limitations period to file an administrative appeal begins on May 3, 2006, the first calendar day after the date of assessment. The 90th day after the date of assessment falls on August 1, 2006, which is a regular business day. Taxpayer C's administrative appeal will be considered timely filed if the envelope is postmarked or dated by a delivery service on or before August 1, 2006. The 90-day limitations period is not extended by the department's issuance of the statement dated June 5, 2006, to Taxpayer C.

D. Complete administrative appeal.

1. In order to be complete, an administrative appeal shall contain the following:

a. Identification of the taxpayer (to include mailing address, federal tax identification number or social security number);

b. Type of tax;

c. Taxable period;

d. Date of assessment (if paid, include date of payment);

e. Remedy sought;

f. A statement signed by the taxpayer or duly appointed or authorized agent or attorney setting forth each alleged error in the assessment, the grounds upon which the taxpayer relies and all facts relevant to the taxpayer's contention; and

g. Controlling legal authority (statutes, regulations, rulings of the Tax Commissioner, court decisions, etc.) upon which the taxpayer's position is based.

2. Administrative appeal form.

a. The department has available an administrative appeal form that can be used to file an administrative appeal with the Tax Commissioner. While use of this form is not mandatory, the information required on the form must be included in the administrative appeal.

b. The form can be found in the appendix of the Taxpayer Bill of Rights on the department's website at www.tax.virginia.gov.

3. Supporting documentation.

a. The taxpayer should include with the administrative appeal all the essential documentation that supports its contentions.

(1) When a dealer is applying for a refund of sales tax, the dealer shall attach a list of the purchasers from whom the tax was collected and to whom the refund and interest, if allowed, will be paid.

(2) When a consumer is applying for a refund of sales or use tax assessed against a dealer or contractor, the consumer shall identify the dealer or contractor, explain the circumstances surrounding the payment by the consumer and explain why the claim for refund could not, or would not, be made by the dealer or contractor.

(3) If the supporting documentation cannot be provided at the time of filing the administrative appeal, the taxpayer should state the reasons why.

b. The department may allow the taxpayer up to 60 additional days from the date the department acknowledges receipt of the administrative appeal to submit the necessary documents. It will be within the department's discretion to allow any additional time beyond the 60 additional days.

c. In some instances, the taxpayer may be permitted to submit a sample of the supporting documents. The taxpayer must agree to make the remainder of the documents available for review by the department.

d. During the course of the administrative appeal process, the department may request additional information from the taxpayer to facilitate rendering a determination of the taxpayer's administrative appeal.

4. Incomplete appeal/notice of intent to appeal.

a. An incomplete appeal or notice of intent to appeal does not satisfy or extend the 90-day limitations period. Informal contact made by a taxpayer with the department after an assessment has been issued does not constitute a complete appeal or a notice of intent to file an administrative appeal.

b. Examples of informal contact include a phone call to an auditor or other department personnel or a meeting with department personnel to discuss the assessment.

5. Examples.

a. Complete administrative appeal.

Example 1. An administrative appeal is filed within the 90-day limitations period and includes the relevant facts, the basis for the appeal and the legal authority that support the taxpayer's position. A sample of the documentation that supports the taxpayer's position is also included. The taxpayer notes that the remainder of the documentation is available for review.

b. Incomplete administrative appeals.

Example 2. The taxpayer's representative files a notice of intent letter with the department within the 90-day limitations period, indicating that it will supplement the letter of intent with the complete grounds for appeal and documentation. The 90-day limitations period expires before the department receives the supplement.

Example 3. A taxpayer submits a written request for a conference to discuss an assessment. This action, by itself, does not constitute a complete appeal.

E. Appeal conference. Any taxpayer assessed with any tax administered by the department as stated in Title 58.1 of the Code of Virginia, and any person assessed a penalty pursuant to § 58.1-1813 of the Code of Virginia, and who has filed a complete appeal is entitled to a conference, if requested, prior to the Tax Commissioner issuing a determination.

1. Purpose of conference.

a. The appeal conference is an informal means by which a taxpayer can present legal arguments and factual

documentation to the department concerning the protested issue(s) in its administrative appeal.

b. A conference to resolve an administrative appeal is not subject to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

2. Taxes discussed in the conference.

a. Any tax administered and assessed by the department as stated in Title 58.1 of the Code of Virginia may be discussed in the conference.

b. The taxes in Subtitle II (§ 58.1-2020 et seq.) of Title 58.1 of the Code of Virginia are administered by other state agencies. Administrative issues related to these taxes should be resolved through the appropriate agency.

3. Requesting a conference.

a. A taxpayer may request a conference at the time a complete appeal is filed with the Tax Commissioner. The conference request must be related to an audit assessment being addressed in the appeal.

b. A taxpayer may also request a conference separately while the administrative appeal is pending. The taxpayer may mail, fax, telephone or email a request for a conference to the department using the contact information located on the administrative appeals form found in the appendix of the Taxpayer's Bill of Rights on the department's website at www.tax.virginia.gov.

4. Granting a conference.

a. A taxpayer will be granted a conference provided a complete appeal has been filed within the 90-day limitations period.

b. The department will not grant a conference for an administrative appeal deemed frivolous or for cases in which a taxpayer requests a conference for the purpose of delaying collection action on a valid assessment.

5. Scheduling a conference. Every attempt will be made to schedule a date and time that is mutually convenient for both the taxpayer and the department. The department will notify the taxpayer by a confirmation letter of the date and time for the conference.

6. Location of conference.

a. A conference will normally be held in the department's main office in Richmond, Virginia. As a convenience for taxpayers, a conference may be held by telephone.

b. A conference may also be held, upon request and at the department's discretion, at other locations. A taxpayer should provide the department sufficient information to support requests for conferences at other sites.

7. Conference attendees.

a. The conference will be conducted by the Tax Commissioner or a designee(s) of the Tax Commissioner. The analyst assigned to the taxpayer's administrative appeal will also attend the conference.

b. The taxpayer and the taxpayer's representative(s) may attend the conference. The taxpayer is not required to attend. See subdivision B 5 of this section for information regarding a power of attorney.

8. Documentation.

a. The taxpayer should be prepared to submit documentation that supports or validates the issues raised in the administrative appeal, as appropriate.

b. A sample of documentation is acceptable, provided the taxpayer agrees to give the department access to the remainder of the documentation for review.

9. After the conference.

a. The Tax Commissioner or his designee will not issue a determination at the conference. The information and supporting documentation presented will be considered as part of the administrative appeal.

b. The Tax Commissioner will issue a determination to the taxpayer's administrative appeal after careful consideration of all information provided, applicable statutes and regulations.

F. Request for reconsideration. A taxpayer who disagrees with the Tax Commissioner's final determination issued pursuant to § 58.1-1822 of the Code of Virginia may request a reconsideration of the determination.

1. Requirements. In order for the Tax Commissioner to grant a request for reconsideration, the request must be received by the department not later than 45 days after the final determination and the taxpayer must demonstrate one of the following:

a. The facts upon which the original determination is based are misstated by the Tax Commissioner or are inaccurate, and the determination would have a different result based on a correction of the Tax Commissioner's misstatement of the facts presented or a clarification of the original facts presented in the taxpayer's administrative appeal;

b. The law upon which the original determination is based has been changed by legislation, court decision or other authority effective for the tax period(s) at issue;

c. The policy upon which the original determination is based is misapplied, and the determination would have a different result based on the application of the proper policy; or

d. The taxpayer has discovered additional evidence or documentation that was not available to the taxpayer at

the time the original administrative appeal was filed with the department, and the additional evidence or documentation could produce a result different from the original determination.

In addition, a taxpayer's request for reconsideration must include the information required for a complete appeal. The taxpayer's request should also include the appropriate documentation (if applicable) to support the taxpayer's position. A sample of the documentation is acceptable, provided the taxpayer agrees to give the department access to the remainder of the documentation for review. Documentation provided with the original administrative appeal does not need to be resubmitted.

If at least one of the four requirements listed above is satisfied, and the request for reconsideration includes the information required for a complete appeal, the Tax Commissioner will grant a taxpayer's request for reconsideration.

2. Collection action.

a. Collection action will be suspended on the portion of the assessment related to the contested issues while the request for reconsideration is pending with the department.

b. Collection action will not be suspended on any portion of the contested assessment if the request for reconsideration fails to satisfy the requirements in subsection A of this section. For example, a notice of intent to file a request for reconsideration or a request for a conference without any other information does not meet the requirements specified in subdivision 1 of this subsection and is not sufficient to suspend collection action.

c. Collection action will not be suspended on the assessed amount attributable to any uncontested issues.

3. Conference.

a. A conference to discuss the issues raised in the request for reconsideration may be granted at the discretion of the department. In the event a conference is granted, it will be scheduled at a date and time that is mutually convenient for both the taxpayer and the department.

b. If appropriate and agreed to by both the taxpayer and the department, the conference may be held by telephone.

4. Denial of request for reconsideration. A request for reconsideration will not be granted if the Tax Commissioner determines the request is:

a. Frivolous or intended to delay collection action on an assessment ruled to be proper in a determination issued pursuant to § 58.1-1822 of the Code of Virginia.

(1) A request for reconsideration will be deemed frivolous if it is based on arguments that are not grounded in law or fact.

(2) A request for reconsideration will be deemed as intending to delay collection action if it repeats the same information contained in the taxpayer's original administrative appeal letter and offers no new information or new legal arguments.

b. Received by the department more than 45 days after the final determination.

5. The Tax Commissioner's written response denying a request for reconsideration based on a finding that (i) the request fails to meet the requirements in subdivision 1 of this subsection or (ii) one of the conditions specified in subsection D of this section exists is not a final determination pursuant to § 58.1-1822 of the Code of Virginia for purposes of filing an application for correction with the circuit court pursuant to § 58.1-1825 of the Code of Virginia.

G. The appropriate contact and mailing information related to the content of this section can be found on the department's website at www.tax.virginia.gov.

H. See 23VAC10-20-160 A for the types of administrative remedies. See 23VAC10-20-160 B for information about the exhaustion of administrative remedies.

23VAC10-20-170. ~~Application for correction (before payment).~~ (Repealed.)

~~A. Application.~~

~~1. A taxpayer may apply to the Commissioner for correction of an erroneous assessment before payment of the assessment. The application must contain all of the information specified in 23VAC10-20-160 C. The application will be handled within the Department in the manner best determined by the Commissioner to resolve the dispute, which may include submission of additional documents and memoranda, further audit, holding a conference with the taxpayer or the taking of testimony. Applications should be addressed to: Tax Commissioner, Virginia Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880.~~

~~2. After receiving a written notice of assessment taxpayers sometimes contact the auditors or other Department personnel with additional information seeking a corrected assessment. Such informal contact will not be considered an application under this section.~~

~~B. Collection and billing. When an application has been duly filed the Commissioner will not take any action to collect the tax, penalty and interest assessed unless he determines that collection is in jeopardy. Interest under §58.1-1812 of the Code of Virginia and additional incremental~~

~~penalties for nonpayment of taxes may accrue while the application is pending. After the Commissioner has made a determination on the application, the assessment, as it may have been modified by such determination, shall become immediately collectible with accrued interest.~~

~~C. Statute of limitations. An application under this §58.1-1821 of the Code of Virginia does not extend the period in which a taxpayer may apply to a court under §58.1-1825 of the Code of Virginia. See 23VAC10-20-190 C.~~

23VAC10-20-180. Amended returns claiming a refund.

A. Filing.

1. Amended returns claiming a refund of any tax administered by the ~~Department~~ department are governed by § 58.1-1823 of the Code of Virginia. Amended returns claiming a refund must be filed within three years from the last day prescribed by law for the timely filing of the original return or, if later, within 60 days from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the Virginia tax is based.

2. The amended return shall supply all the information required in an original return and, in addition, the taxpayer must attach a statement explaining the changes made and the reasons for the changes. If the refund claim is due to a change in federal taxable income or estate, the taxpayer must furnish a copy of the Revenue ~~Agent's~~ Agent's Report or other appropriate notice that the change has been accepted by the Internal Revenue Service. ~~For additional information required from dealers claiming a refund of sales and use tax see 23VAC10-20-160 C.~~

a. When a dealer is applying for a refund of sales tax, the dealer shall attach a list of the purchasers from whom the tax was collected and to whom the refund and interest, if allowed, will be paid.

b. When a consumer is applying for a refund of sales or use tax assessed against a dealer or contractor, the consumer shall identify the dealer or contractor, explain the circumstances surrounding the payment by the consumer and explain why the claim for refund could not, or would not, be made by the dealer or contractor.

3. The time limit specified above applies only to amended returns claiming a refund and does not apply to amended returns showing a tax due. The period for assessing taxes due may vary for each type of tax and may also depend on circumstances such as fraud or failure to file a return.

4. See § 58.1-9 of the Code of Virginia for provisions relating to filing a return by mail.

B. Final determination. For the purposes of this regulation, any one of the following shall be deemed a final determination of a change in liability for the federal tax:

1. Payment or refund of any federal income or estate tax, not the subject of any other final determination described in ~~subdivisions~~ subdivision 2, 3, 4, or 5 of subsection B. The payment of a federal income or estate tax is a final determination for Virginia purposes even though a refund suit may be pending or contemplated which could result in another "final determination";

2. The receipt of an assessment or other notice that the amount of deficiency or overassessment stated on federal Form 870 or similar form has been agreed to by the IRS;

3. The expiration of the 90-day time period (150-day period in the case of notice addressed to a person outside the states of the union and the District of Columbia) within which a petition for redetermination may be filed with the U.S. Tax Court with respect to a statutory notice of deficiency issued by the Internal Revenue Service, if a petition is not filed with that court within such time;

4. A closing agreement entered into with the Internal Revenue Service under Section 7121 of the Internal Revenue Code. The "final determination" shall occur when the taxpayer receives notice of the signing by the Commissioner of Internal Revenue;

5. A decision by the U.S. Tax Court, U.S. District Court, U.S. Claims Court, U.S. Court of Appeals or the United States Supreme Court ~~which~~ that has become final, or the date the court approves a voluntary agreement stipulating disposition of the case.

C. Assessment. The denial in whole or in part of taxpayers claim for refund, or the department's failure to act within three months, is treated as an assessment for the purpose of permitting taxpayer to pursue other administrative and judicial remedies, but only as to matters first raised by the amended return. Therefore an amended return should not be filed if the claim for refund involves issues that were previously considered in the course of an audit, application for correction or protective claim.

23VAC10-20-190. Protective claims (after payment).

A. Filing.

1. If all assessed taxes, penalties and accrued interest have been paid and taxpayer desires to preserve his judicial remedies he may file a protective claim with the Tax Commissioner within three years of the assessment. ~~The protective claim must furnish all information specified in subsection C of 23VAC10-20-160~~

2. There is no form for applications for protective claims. The department will accept any submission that sufficiently identifies the taxpayer, type of tax, taxable period, remedy sought, date of assessment and the date of payment, a statement signed by the taxpayer or duly appointed or authorized agent or attorney setting forth each alleged error in the assessment, the grounds upon which

taxpayer relies, and all facts relevant to taxpayer's contention, and, if appropriate, should show that determination of the facts or law applicable to taxpayer depends upon the outcome of another case pending in the ~~Department~~ department or the courts. See the department's website at www.tax.virginia.gov for the appropriate contact and mailing information.

3. An application for a protective claim filed on behalf of a taxpayer by an attorney, accountant or tax preparer must be signed by the taxpayer or accompanied by a duly executed power of attorney in favor of such representative who signs the application or claim.

~~Protective claims shall be addressed to the Tax Commissioner, Virginia Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880.~~

~~2.~~ 4. Taxpayer may submit a protective claim even if the merits have already been administratively considered under either § 58.1-1821 or ~~§~~ 58.1-1823 of the Code of Virginia.

B. Issues held pending litigation. If the Tax Commissioner determines that the protective claim involves facts or law which depend upon resolution of a pending case, he may, in his discretion, hold that portion of the protective claim without decision until the pending case has been decided. Upon resolution of the pending case the Tax Commissioner will decide those issues held pending such resolution. The provisions of this subsection will be strictly limited to those issues which actually depend upon resolution of a pending case; all other issues will be decided on the merits. The Tax Commissioner may require additional information about the protective claim as limited to particular issues involved in a pending case. Taxpayer will be advised as to what portion, if any, of his protective claim is being held without decision pending resolution of another case.

C. Statute of limitations.

1. Taxpayer may apply to the court under § 58.1-1825 of the Code of Virginia within one year after decision on taxpayer"s protective claim, or three years from the assessment, whichever is later.

2. If an application for correction is pending under § 58.1-1821 of the Code of Virginia and taxpayer desires to extend his right to apply to a court under § 58.1-1825 of the Code of Virginia, taxpayer may pay all assessed taxes, penalties and accrued interest and, within three years of the assessment, reapply under this section. Such reapplication may simply refer to the pending § 58.1-1821 of the Code of Virginia application, state that the assessment has been paid and request consideration under § 58.1-1824 of the Code of Virginia.

NOTICE: The forms used in administering the above regulation are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

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).

Administrative Appeal Pursuant to Virginia Code § 58.1-1821.

Virginia Department Of Taxation
Administrative Appeal Pursuant To Virginia Code §58.1-1821

Taxpayer Information

Name of Taxpayer _____

Mailing Address _____

_____

Administrative Appeal Information

Tax Contested (Check All That Apply)

Tax Type	Tax Period(s) or Taxable Year(s)
☐ Individual Income Tax	_____
☐ Corporate Income Tax	_____
☐ Retail Sales And Use Tax	_____
☐ Other (Specify) _____	_____

Virginia Department Of Taxation Account Number _____

FEIN Or SSN _____

Date(s) Of Assessment(s)	Bill Number(s)
_____	_____
_____	_____
_____	_____

Issue(s) - State In As Few Words As Possible The Issue(s) You Are Contesting

_____

_____

_____

Controlling Legal Authority (Please Cite Specific Relevant Authorities)

Virginia Code _____

Regulations (Virginia Administrative Code) _____

_____

Prior Ruling Of The Tax Commissioner (Public Documents) _____

_____

Other _____

_____

On attached sheets, please fully describe the issue(s) contested. Please note that this appeal will be decided based on the facts before the Department of Taxation. If additional information is needed or requested, it must be furnished with in the prescribed time period or the case will be decided based on the available facts.

Submitted By* _____

*A Power of Attorney must be provided authorizing representation of the Taxpayer.

Address _____

Telephone _____ Date _____

Fax Number _____ E-mail Address _____

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VA.R. Doc. No. R09-1096; Filed December 2, 2008, 12:08 p.m.

Fast-Track Regulation

Titles of Regulations: **23VAC10-210. Retail Sales and Use Tax (amending 23VAC10-210-6060).**

23VAC10-230. Watercraft Sales and Use Tax (amending 23VAC10-230-20, 23VAC10-230-30, 23VAC10-230-40, 23VAC10-230-80, 23VAC10-230-90, 23VAC10-230-110, 23VAC10-230-120; adding 23VAC10-230-70, 23VAC10-230-75).

Statutory Authority: § 58.1-203 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 February 20, 2009.

Effective Date: March 8, 2009.

Agency Contact: Jennifer Lewis, Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2341, FAX (804) 371-2355, or email jennifer.lewis@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department."

Purpose: The purpose of this regulatory action is to provide clarification with respect to Watercraft Sales and Use Tax as well as amend the regulation to reflect statutory changes regarding the maximum tax limitation, the titling requirements, the tax status of watercraft motors, and the definition of dealer watercraft. This regulatory action will also promulgate two new regulation sections, 23VAC10-230-70 and 23VAC10-230-75. 23VAC10-230-70 will clarify information already in the regulation and 23VAC10-230-75 will clarify TAX's existing policy on dealer exclusion. The Retail Sales and Use Tax regulation section regarding watercraft sales, leases, and rentals, repair and replacement parts, and maintenance materials will be amended to reflect a statutory change regarding maintenance contracts.

This regulatory action is necessary to ensure a predictable and adequate revenue stream for the government to provide for the health, safety, and welfare of its citizens.

Rationale for Using Fast-Track Process: As the new regulation will not make any changes to TAX's current policy regarding the watercraft, this action is not expected to be controversial.

Substance: This regulatory action will provide clarification on the Watercraft Sales and Use Tax. The Retail Sales and Use Tax section subjecting "watercraft" to the Watercraft Sales and Use Tax will be amended to reflect a statutory change regarding maintenance contracts as well as the tax application for boat motors.

The Watercraft Sales and Use Tax definition section will be organized alphabetically and definitions currently found in other sections will be moved.

This regulatory action will also promulgate a new regulation 23VAC10-230-70. This section will incorporate language currently located in the definition section. The section will detail when a transaction is subject to the Retail Sales and Use Tax and reference 23VAC10-210-6060.

23VAC10-230-75 will clarify TAX's existing policy on dealer exclusion. This section will clarify the definition of gross receipts.

This regulatory action will also amend the regulation section to reflect statutory changes. Since the regulation was promulgated in the 1980s, there have been multiple statutory changes. In 1986, an exemption was added for watercraft purchased by nonprofit sea rescue squads. In 1987 a tax limitation was placed on the tax. In 1990 the tax limitation was increased to its current level of $2000. In 1994 boat motors were subjected to the Watercraft Sales and Use Tax. In 1997 the definition of watercraft was altered to include any vessel propelled by machinery, whether or not the machinery was the principle source of propulsion. The titling requirements set forth in §§ 29.1-712 through 29.1-722 of the Code of Virginia have also changed.

Issues: The regulatory action poses no disadvantages to the public or the Commonwealth. The primary advantage to the public and to the Commonwealth is that by updating the regulation to reflect statutory changes, the public will better understand the tax and how it is administered. Another advantage to the public and to the Commonwealth is that by adding additional examples, the public will better understand TAX's policy regarding watercraft.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (Department) proposes several amendments to the Watercraft Sales and Use Tax regulations. There have been several statutory changes since this regulation was last amended. All proposed changes to the regulation are either straight from current statutes or are merely clarifying language and do not change requirements. Proposed amendments reflecting statutory change include: 1) adding a tax exemption for watercraft purchased by nonprofit sea rescue squads, 2) first establishing, and then raising the maximum tax limitation to its current level of $2000 (this maximum tax was first imposed in 1990), 3) amending the titling requirements, 4) addressing the tax status of watercraft motors, and 5) amending the definition of watercraft to include any vessel propelled by machinery. Further, the Department proposes numerous clarifying changes such as

amending definitions, moving certain language from one section to another, adding examples, and updating Code citations as well as regulatory cross-references. Also, the Department proposes to add a new section to the regulations that would clarify existing policy on dealer exclusion and modify the definition of gross receipts.

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

Estimated Economic Impact. The current regulation is inconsistent with parts of the Code of Virginia. When statutes and regulations conflict, the statutes prevail. Since all proposed changes are either straight from statute or are merely clarifying language, the proposed amendments do not change any requirements for the public and thus do not produce any cost. The proposed amendments will be beneficial for the public in that there will be less confusion on the law regarding watercraft sales and use tax.

Businesses and Entities Affected. These regulations potentially affect all Virginia taxpayers.

Localities Particularly Affected. The proposed amendments affect all localities. Localities along the coast or that particular feature other navigable waters may be particularly affected.

Projected Impact on Employment. Since the proposed amendments do not change current or future requirements, employment is not significantly affected.

Effects on the Use and Value of Private Property. Since the proposed amendments do not change current or future requirements, the use and value of private property is not significantly affected.

Small Businesses: Costs and Other Effects. Since the proposed amendments do not change current or future requirements, small business are not significantly affected.

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.

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

Summary:

This regulatory action provides clarification with respect to Watercraft Sales and Use Tax as well as amends the regulation to reflect statutory changes. This regulatory action will also promulgate two new regulation sections, 23VAC10-230-70 and 23VAC10-230-75, that clarify information already in the regulation. The retail sales and use tax regulation section regarding watercraft sales, leases, and rentals; repair and replacement parts; and maintenance materials is amended to reflect a statutory change regarding maintenance contracts.

23VAC10-210-6060. Watercraft sales, leases, and rentals~~,~~ ; repair and replacement parts~~,~~ ; and maintenance materials.

A. Generally. Sales, leases, and rentals of watercraft are not subject to the retail sales and use tax when ~~such~~ the same transactions are subject to the watercraft sales and use tax. See the Watercraft Sales and Use Tax Regulations, 23VAC10-230, for more information on the tax. Watercraft not subject to the watercraft sales and use tax are subject to the retail sales and use tax when sold, leased or rented.

~~B. Watercraft subject to the watercraft sales and use tax described. For the purposes of this regulation, watercraft subject to the watercraft sales and use tax shall mean every type of craft described in § 58.1-1401 of the Code of Virginia and the accompanying regulations.~~

~~C.~~ B. Repair and replacement parts ~~installed in watercraft sold, leased or rented~~ and accessories .

1. Repair and replacement parts ~~and~~, accessories, attachments, and lubricants installed on a watercraft at the time of sale, or on leased or rented watercraft, that are included in the sales price for computing the watercraft sales and use tax or in gross receipts from a lease or rental

are exempt from the retail sales and use tax. Such items may be purchased by a dealer, as defined in § 58.1-1401 of the Code of Virginia ~~and the accompanying regulations~~, exclusive of the retail sales and use tax when a resale exemption certificate, Form ST-10, is presented at the time of sale. Repair parts purchased by nondealers for installation on watercraft are not exempted from the retail sales and use tax.

2. Boat motors. Boat motors that will be installed on watercraft are subject to the Watercraft Sales and Use Tax. Any boat motors that will not be installed on watercraft are subject to the retail sales and use tax. See 23VAC10-230-40 B for more information on boat motors subject to the Watercraft Sales and Use Tax.

~~D.~~ C. Maintenance contracts and materials. One-half the charge for maintenance contracts that provide for both repair labor and repair parts is subject to the tax. If a maintenance contract provides only for repair labor, the charge for the contract is tax exempt. Maintenance contracts for replacement parts only are taxable on the full charge for this contract. Maintenance materials such as oil, grease, soaps, cleaners, etc. used on watercraft are subject to the retail sales and use tax. See the Virginia Watercraft Sales and Use Tax Regulations for information relating to the watercraft sales and use tax generally.

23VAC10-230-20. Watercraft exclusion.

~~Effective January 1, 1982, watercraft~~ Watercraft as defined in § 58.1-1401 of the Code of Virginia are not subject to the ~~four percent~~ Virginia retail sales and use tax imposed by Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 but are subject to the ~~two percent~~ 2.0% watercraft sales and use tax imposed by Chapter 14 (§ 58.1-1400 et seq.) of Title 58.1 of the Code of Virginia.

23VAC10-230-30. Definitions.

The following words~~,~~ and terms when used in this chapter shall have the following meanings: ~~and phrases are defined herein for purposes of the tax imposed by Chapter 14 of Title 58.1 of the Code of Virginia only:~~

"Attachments thereon and accessories thereto" means all tangible personal property that is physically attached to watercraft or property that is customarily used in watercraft, whether or not affixed to the structure of the watercraft, and which was transferred in the same transaction as the watercraft as a part of the watercraft sale.

~~"Watercraft" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water and which are fifteen feet or more in overall length measured along the centerline and which have a gross weight in excess of four hundred pounds, except watercraft which are documented by the United States Coast Guard.~~

~~The term "overall length" as used here is the horizontal distance, measured along the centerline, that is, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, bumpkins, rudders, outboard motor, and similar fittings or attachments. The term "gross weight" as used here includes the boat hull and motor and all other attachments thereon and accessories thereto.~~

~~Marine documentation is issued by the United States Coast Guard to the owner(s) of vessels or watercraft as evidence of ownership in such vessels or watercraft. Valid documentation becomes void upon sale and must be reinstated in the name(s) of the purchaser(s). Therefore, for purposes of this chapter, no watercraft will be considered to have a valid marine document when purchased either new or used and every watercraft purchased on or after January 1, 1982 which meets the length and weight requirements of this subparagraph will meet the definition of "watercraft."~~

~~Watercraft purchased and documented without this State and brought into this State for use in this State on or after January 1, 1982 may have valid documentation issued by the United States Coast Guard. Such vessels with valid documentation do not meet the definition of "watercraft."~~

"Commissioner" means the Tax Commissioner.

"Current market value" means the value of a watercraft considering age, make, model, and included accessories in accordance with such publications or other data as are customarily employed in ascertaining the sales price of used watercraft.

"Dealer" means ~~any person the Tax Commissioner finds to be in the regular business of selling watercraft. If a person has held during the previous or current calendar year five or more watercraft for resale, (or use for compensation), the Commissioner may find such person to be a dealer for purposes of this chapter.~~ watercraft dealer as defined in § 29.1-801 of the Code of Virginia.

"Person" means every natural person, firm, partnership, association, corporation, or other entity.

"Sale" means any transfer of ownership or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, of a watercraft. The term "sale" includes a transaction whereby possession is transferred but title is retained by the seller as security. ~~However, "sale" excludes any transfer of ownership or possession which transfer is made to secure payment of an obligation.~~ The term "sale" also includes any lease or rental for a period of time ~~substantially~~ equal to or exceeding 80% of the remaining life of the watercraft, and any lease or rental requiring total payments by the lessee during the lease or rental period which substantially equal the value of the watercraft. ~~(a)~~ The remaining life of the watercraft shall be estimated in accordance with generally accepted accounting principles, considering factors such as physical deterioration,

normal obsolescence, maintenance, and intensity of use. ~~(b) For purposes of this chapter, the term "substantially equal" shall mean "80% or more."~~

~~(c) For purposes of this chapter, the term "value of the watercraft" shall mean the current market value of the watercraft in accordance with such publications or other data as are customarily employed in ascertaining the maximum sale price of watercraft.~~

~~The same sale will not be subject to the tax more than once. However, unless it is an exempt transfer, each time a transfer of ownership or possession takes place, the new owner will be subject to the tax on the transfer.~~

~~As used in this chapter, the term "sale" does not include the following:~~

~~(a) Any transfer of ownership or possession which transfer is made to secure payment of an obligation.~~

~~(b) Any transfer of ownership or possession which is incidental to repossession under a lien and under which ownership is transferred to the repossessor, his nominee or a trustee, pending ultimate disposition or sale of the collateral.~~

~~(c) Any transfer of ownership or possession which is part of the sale of all or substantially all the assets of any business. The exemption applies only to watercraft upon which Virginia Watercraft Sales and Use Tax or Virginia Retail Sales and Use Tax has been paid by the transferor and does not include non-titled watercraft held for resale by a dealer or manufacturer or any other watercraft held or used for exempt purposes by the transferor. The tax status of such watercraft will be determined by the transferee's purposes and use of the watercraft. For purposes of this regulation the term "substantially all the assets" shall mean "80% or more."~~

~~(d) Any transfer of ownership or possession by survivorship, inheritance or gift.~~

~~(e) Any transfer of ownership or possession from an individual or partnership to a corporation or from a corporation to an individual or partnership if the transfer is incidental to the formation, organization, reorganization, or dissolution of a corporation in which the individual or partnership holds the controlling interest. For purposes of this exemption, a controlling interest means the ownership of at least 80% of all outstanding shares of voting stock.~~

~~(f) Any transfer of ownership or possession between affiliated corporations if Virginia Watercraft Sales and Use Tax or Virginia Retail Sales and Use Tax was paid on the acquisition or use of the transferred watercraft by the transferring corporation. For purposes of this exemption, two or more corporations shall be deemed to be affiliated if (a) one corporation owns at least 80% of the outstanding shares of voting stock of the other or others or (b) at least 80% of the outstanding shares of voting stock of two or more corporations is owned by the same interests.~~

~~Example 1~~

~~Corporation A purchased in 1979 a watercraft in excess of 15 feet in length and in excess of 400 pounds in weight and paid Virginia Retail Sales and Use Tax on the purchase. In 1982 Corporation A acquired all of the capital stock of Corporation B and transferred its watercraft to Corporation B. The transfer would not be subject to Virginia Watercraft Sales and Use Tax because it would represent a transfer between qualified affiliates (parent owning at least 80% of subsidiary) and because Virginia Retail Sales and Use Tax was paid on the acquisition of the transferred watercraft by the transferring corporation.~~

~~Example 2~~

~~Corporation C purchased a watercraft in excess of 15 feet in length and in excess of 400 pounds in weight in Delaware in March 1982. In June 1982 Corporation C acquired all of the capital stock of Corporation D, a Virginia corporation, and transferred its watercraft to Corporation D. The acquisition of the watercraft by Corporation D is subject to Virginia Watercraft Sales and Use Tax. While this would represent a transfer between qualified affiliates, Virginia Watercraft Sales and Use Tax was not paid on the acquisition of the transferred asset by the transferring corporation.~~

~~Example 3~~

~~Individual A owns 100% of the voting stock of Corporation E and 85% of the voting stock of Corporation F. Both corporations operate businesses within Virginia. In 1982, Corporation E transfers to Corporation F a watercraft which it had previously purchased and on which it had paid Virginia Watercraft Sales and Use Tax. The transfer would not be subject to Virginia Watercraft Sales and Use Tax because it would represent a transfer between qualified affiliates (at least 80% of the voting stock of each corporation is owned by the same owner) and because Watercraft Sales and Use Tax was paid on the acquisition of the transferred watercraft by the transferring corporation.~~

~~(g) Transfer of watercraft repair parts, accessories, attachments, and lubricants, not included in the same transaction with the transfer of the watercraft. Sales of all such tangible personal property are subject to the Virginia Retail Sales and Use Tax and reportable on Form ST-9, Dealer's Retail Sales and Use Tax Return.~~

~~"Sale~~ "Sales price" as used in this chapter means the total price paid for a watercraft and all attachments thereon and

accessories thereto including all installation and labor charges, without any allowance or deduction for trade-ins or unpaid liens or encumbrances~~, but exclusive of any federal manufacturers' excise tax~~. Such tangible personal property transferred other than in the same transaction with the watercraft will be subject to the retail sales and use tax, except boat motors that will be placed on a watercraft. Charges for lettering and get-ready charges (cleaning, washing and preparing) are also included in the sales price when made in the same transaction with the watercraft transfer. However, excluded from the sales price are charges for federal manufacturer's excise tax, registration and titling fees, insurance, and gasoline, when separately stated on the invoice.

"Titled with the Department of Game and Inland Fisheries" means titled with the Department of Game and Inland Fisheries pursuant to § 29.1-713 of the Code of Virginia.

"Watercraft" means any vessel propelled by machinery whether or not the machinery is the principal source of propulsion. The term shall also include any sail-powered vessel that has an overall length in excess of 18 feet in length measured along the centerline. The term shall not include a seaplane on the water or a watercraft that has a valid marine titling document issued by the United States Coast Guard (USCG). See subsection D of 23VAC10-230-80 for more information on USCG marine titling. Any motor used to power a watercraft shall be deemed a "watercraft" for purposes of the tax. The term "overall length" as used here is the horizontal distance, measured along the centerline, that is, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, bumpkins, rudders, outboard motor, and similar fittings or attachments.

~~The terms "attachments thereon" and "accessories thereto" as used herein mean all tangible personal property that is physically attached to watercraft, including installation charges, or property that is customarily used in watercraft, whether or not affixed to the structure of the watercraft, and which was transferred in the same transaction as the watercraft as a part of the watercraft sale. Such tangible personal property transferred other than in the same transaction with the watercraft will be subject to the four percent retail sales and use tax.~~

~~Charges for lettering and get-ready charges (cleaning, washing and preparing) are also included in the sale price when made in the same transaction with the watercraft transfer. However, excluded from the sale price are charges for federal manufacturer's excise tax, registration and titling fees, insurance, and gasoline, when separately stated on the invoice.~~

23VAC10-230-40. Tax levied.

A. Generally. ~~On and after January 1, 1982, the~~ The Watercraft Sales and Use Tax is imposed at the rate of ~~two percent~~ 2.0% upon the sale of every watercraft sold in Virginia that is required to be titled with the Department of Game and Inland Fisheries and upon the use in Virginia of any watercraft that is required to be titled with the Department of Game and Inland Fisheries.

1. There is a $2,000 maximum tax limitation on the amount of Watercraft Sales and Use Tax that may be levied on the sales price of watercraft sold in Virginia, on the sales price of watercraft sold elsewhere but required to be titled in Virginia, and on the market value of watercraft first required to be titled in Virginia six months or more after its acquisition. This maximum tax limitation does not apply to leases, charters or other uses of watercraft subject to the Watercraft Sales and Use Tax. ~~The tax is to be collected by applying the following rate against the sale price:~~

~~(1) For watercraft sold in Virginia, the amount of tax is two percent of the sale price of the watercraft.~~

~~(2) For watercraft not sold in Virginia but required to be titled in Virginia, the amount of tax is two percent of the sale price of the watercraft, wherever sold; however, if~~

2. If the watercraft is not sold in Virginia and is first required to be titled in Virginia six months or more after its acquisition, the tax is imposed at ~~two percent~~ 2.0% of the current market value of the watercraft if such current market value is less than the ~~sale~~ sales price of the watercraft including the cost of any modifications, improvements or additions subsequent to initial acquisition.

B. Boat motors generally. The tax applies to all boat motors that will be placed on a watercraft as defined in 23VAC10-230-30.

1. Dealers who are in the regular business of selling watercraft, and who have agreed with the department to collect and remit watercraft tax on behalf of their customers, shall collect and remit the tax on motors sold that will be placed on watercraft.

2. If a dealer has not agreed with the department to collect and remit watercraft tax, the dealer must charge the retail sales and use tax. the department will subsequently refund the difference (between the retail sales and use tax and watercraft tax) directly to the customer upon application by the customer to the department.

3. See 23VAC10-230-75 and 23VAC10-230-90 C for more information on dealers.

~~B.~~ C. The following list contains scenarios that are not considered sales for the purposes of the Watercraft Sales and Use Tax and are therefore not taxable transactions:

1. Any transfer of ownership or possession where the transfer is made to secure payment of an obligation.

2. Any transfer of ownership or possession that is incidental to repossession under a lien and under which ownership is transferred to the repossessor, his nominee or a trustee pending ultimate disposition or sale of the collateral.

3. Any transfer of ownership or possession that is part of the sale of all or substantially all the assets of any business. The exemption applies only to watercraft upon which Virginia Watercraft Sales and Use Tax or Virginia Retail Sales and Use Tax has been paid by the transferor and does not include nontitled watercraft held for resale by a dealer or manufacturer or any other watercraft held or used for exempt purposes by the transferor. The tax status of such watercraft will be determined by the transferee's purposes and use of the watercraft. For purposes of this exclusion, the term "substantially all the assets" shall mean "80% or more."

4. Any transfer of ownership or possession by survivorship, inheritance or gift.

5. Any transfer of ownership or possession from an individual or partnership to a corporation or from a corporation to an individual or partnership if the transfer is incidental to the formation, organization, reorganization, or dissolution of a corporation where the individual or partnership holds the controlling interest. For purposes of this exclusion, a controlling interest means the ownership of at least 80% of all outstanding shares of voting stock.

Example 1. Corporation ABC transfers ownership of its watercraft to Partnership JKL, where the transfer is incidental to the dissolution of Corporation ABC and Partnership JKL owns 85% of the voting stock of Corporation ABC. The transfer is not considered a sale for the purposes of the Watercraft Sales and Use Tax.

Example 2. Same facts as example 1, except that Partnership JKL owns 50% of the voting stock of Corporation ABC. The transfer is considered a sale for the purposes of the Watercraft Sales and Use Tax.

6. Any transfer of ownership from a partner to the partnership in which he is a partner will be deemed a taxable sale only in part. The part taxable is the gained aggregate interest of the partnership. Similarly, any transfer of ownership from a partnership to a partner will be deemed a taxable sale only on the gained aggregate interest of the partner.

Example. Partner T owned a watercraft that he has transferred to Partnership RST. Partnership RST has two partners in addition to Partner T, where all partners are equal shareholders possessing 1/3 of the partnership. The gained aggregate interest of Partnership RST is 2/3, while as a member of Partnership RST, Partner T is maintaining possession of 1/3. The tax must be paid on 2/3 the current market value or the purchase price of the watercraft, whichever is lower.

7. Any transfer of ownership or possession between affiliated entities if Virginia Watercraft Sales and Use Tax or Virginia Retail Sales and Use Tax was paid on the acquisition or use of the transferred watercraft by the transferring entity. For purposes of this exclusion, two or more entities shall be deemed to be affiliated if (i) one entity owns at least 80% of the outstanding shares of voting stock (or equivalent ownership interests) of the other or others or (ii) at least 80% of the outstanding shares of voting stock (or equivalent ownership interests) of two or more entities is owned by the same interests. For purposes of this exclusion, entity means a business organization, other than a sole proprietorship, that is a corporation, limited liability company, or partnership, including general partnership, limited partnership, or limited liability partnership, duly organized under the laws of the Commonwealth or another state.

Example 1. Corporation A purchased a watercraft in Virginia and paid Virginia Watercraft Sales and Use Tax on the purchase. The following year, Corporation A acquired all of the capital stock of Corporation B and transferred its watercraft to Corporation B. The transfer would not be subject to Virginia Watercraft Sales and Use Tax because it would represent a transfer between qualified affiliates (parent owning at least 80% of subsidiary) and because the tax was paid on the acquisition of the transferred watercraft by the transferring corporation.

Example 2. Individual A owns 100% of the voting stock of Corporation E and 85% of the voting stock of Corporation F. Both corporations operate businesses within Virginia. In 1982, Corporation E transfers to Corporation F a watercraft that it had previously purchased and on which it had paid Virginia Watercraft Sales and Use Tax. The transfer would not be subject to Virginia Watercraft Sales and Use Tax because it would represent a transfer between qualified affiliates (at least 80% of the voting stock of each corporation is owned by the same owner) and because Watercraft Sales and Use Tax was paid on the acquisition of the transferred watercraft by the transferring corporation.

D. Each transaction taxable. The same transaction will not be subject to the tax more than once. However, each time a sale or transfer takes place, or a watercraft is brought into use in Virginia and required to be titled, the new owner or new user in Virginia will be subject to the tax and will be required to title the watercraft with the Department of Game and Inland Fisheries.

~~C. Requirement to be titled. "Required to be titled" as used in this section refers to the titling and registration provisions of Chapter 17 of Title 62.1 of the Code of Virginia (Repealed). Section 62.1 186.2 of the Code of Virginia~~

~~(Repealed) requires that any owner, except a registered dealer, of any watercraft acquired after January 1, 1982, or in which an interest is transferred after that date, must apply for a title with the Department of Game and Inland Fisheries within 30 days of acquisition or transfer. Furthermore, § 62.1-186.2 of the Code of Virginia (Repealed) requires that "any owner who renews the certificate of number for his watercraft, shall apply for a certificate of title at the time of such renewal."~~

~~D.~~ E. Watercraft not sold in Virginia; use tax. When the watercraft is not sold in Virginia but is required to be titled for use in Virginia, ~~i.e., when the owner applies for renewal of his certificate of number,~~ the use tax applies. Any watercraft purchased without this state~~, even if before January 1, 1982,~~ and subsequently required to be titled in Virginia, is subject to the ~~two percent~~ 2.0% use tax based on the ~~sale~~ sales price, or the current market value of the watercraft if purchased six or more months before being required to be titled in Virginia and if such value is less than the sales price, including the cost of any modifications, improvements or additions subsequent to initial acquisition.

~~E. Current market value. "Current market value" as used in this section means an average value considering age, make, model, and included accessories in accordance with such publications or other data as are customarily employed in ascertaining the sale price of used watercraft.~~

~~F. Occasional sale. In addition to transfers by dealers, the tax applies to an occasional sale of a watercraft. Occasional sale means a sale of a watercraft by anyone not a dealer in watercraft.~~

E. See 23VAC10-230-90 for information concerning payment of tax.

23VAC10-230-70. Transfer of watercraft repair parts, accessories, attachments, and lubricants, not included in the same transaction with the transfer of the watercraft.

Sales of all watercraft repair parts, accessories, attachments, and lubricants not included in the same transaction with the transfer of the watercraft are subject to the Virginia Retail Sales and Use Tax and reportable on Form ST-9, Dealer's Retail Sales and Use Tax Return. All such tangible personal property is only subject to the Watercraft Sales and Use Tax when it is considered an attachment thereon or accessory thereto and part of the sales price. See 23VAC10-210-6060 for more information on the application of the retail sales and use tax.

23VAC10-230-75. Dealer exclusion.

A. Generally. Any person determined by the Tax Commissioner to be a dealer and who desires to transfer ownership in watercraft without first titling them, must apply with the Tax Commissioner for a dealer certificate of registration.

If a person is determined by the Tax Commissioner to be a dealer in watercraft and is registered, he will be exempt from the Watercraft Sales and Use Tax as to all watercraft he purchases for resale or for lease, charter, or other use for compensation. However, a registered dealer is subject to a tax of 2.0% of the gross receipts from the lease, charter, or other use of any watercraft so used.

B. Gross receipts. Gross receipts includes hourly rental, maintenance, and all other charges for use of such watercraft. Also, unless separately stated on the invoice, gross receipts includes charges for piloting, crew, or other services in connection with the use of such watercraft.

For purposes of the dealer exclusion, the dealer is the user of the watercraft and is subject to tax on his gross receipts. Therefore, gross receipts from rentals, leases or charters to the United States or any governmental agencies thereof, or to the Commonwealth of Virginia or any political subdivision thereof, are includible in the dealer's gross receipts and subject to the tax.

23VAC10-230-80. ~~Other exemptions~~ Exemptions and exclusions.

A. Governments, insurance companies. The watercraft sales and use tax does not apply to sales to or use by the United States or any of the governmental agencies thereof, the Commonwealth of Virginia or any political subdivision thereof, or sold to an insurance company for the sole purpose of disposition when such insurance company has paid the registered owner of the watercraft on a total loss claim, nor does the tax apply to ships or vessels used or to be used exclusively in interstate or foreign commerce.

For sales to the United States, the Commonwealth of Virginia or any political subdivision to be exempt from the tax, the purchases must be pursuant to required official purchase orders to be paid for out of public funds. Sales to governmental employees for their own use are taxable. If pursuant to an official purchase order, the tax will not apply to sales to or use by officers' clubs, noncommissioned officers' clubs, officers' messes, noncommissioned officers' messes, and post exchanges organized, operated and controlled under Department of Defense regulations. The exemption does not cover individuals or organizations operating on a military reservation in their own right. No person is relieved from liability for payment of, collection of, or accounting for the tax on the ground that the sale or use occurred in whole or in part within a federal area.

In the first sentence of this section, the phrase "use by" relates to the exempt use in ~~this state~~ the Commonwealth of any watercraft purchased without this state by a governmental agency as set out above. It has no application in cases where the renter, lessee, or other user is a governmental agency.

~~B. Owners on January 1, 1982. Any person who was the owner of a watercraft before January 1, 1982, is not liable for~~

~~the watercraft sales and use tax on the watercraft and may apply for title without payment of the tax. The purchase in Virginia before January 1, 1982, would have been subject to the four percent retail sales and use tax unless it was an exempt sale. However, any watercraft purchased without Virginia before January 1, 1982, and which is first used in Virginia on or after January 1, 1982, is subject to the two percent use tax. See 23VAC10-230-120 for credit provisions.~~

~~C.~~ B. Commercial watermen. Any watercraft constructed by a commercial waterman for his own use in extracting fish, bivalves or crustaceans from waters for commercial purposes is exempt from the ~~watercraft sales and use tax~~ Watercraft Sales and Use Tax so long as such watercraft is used solely and exclusively for such purposes. If such watercraft is used primarily for exempt purposes but also for ~~non-exempt~~ nonexempt purposes, it will be subject to tax on a pro rata portion of its value based on the percentage of non-exempt use; if not used primarily for exempt purposes, its entire value will be subject to tax. For purposes of this ~~subparagraph~~ subsection the term "used primarily" means used more than ~~fifty percent~~ 50% for exempt purposes.

C. United States Coast Guard marine documentation. Vessels with valid marine documentation do not meet the definition of "watercraft" (see 23VAC10-230-30). Marine documentation is issued by the United States Coast Guard to the owner(s) of vessels as evidence of ownership in such vessels. Valid documentation becomes void upon sale and must be reinstated in the name(s) of the purchaser(s). Therefore, for purposes of this chapter, no watercraft will be considered to have a valid marine document when purchased either new or used.

D. See § 58.1-1404 of the Code of Virginia for additional exemptions.

~~NOTE:~~ E. The exemptions of this section do not apply with respect to rentals, leases or charters in the case of a dealer who pays a gross receipts tax under the dealer exclusion, as the gross receipts tax is levied on the dealer and not upon the renter, lessee, or other user.

23VAC10-230-90. Payment of tax required for title.

A. Generally. The watercraft sales and use tax is to be paid by the purchaser or user of watercraft and is to be collected by the Tax Commissioner at the time the owner is required to apply for a title for the watercraft.

~~Application for title is to be made with the Department of Game and Inland Fisheries. As used in this section, the phrase "at the time the owner is required to apply for a title" refers to the requirement given in § 62.1-186.2(A) of the Code of Virginia (Repealed) as follows:~~

~~"Any owner, except a registered dealer, of any watercraft acquired after January one, nineteen hundred eighty-two, or in which an interest is transferred after that date, shall apply to the Commission for a certificate of title in the name of the owner within thirty days of such acquisition or transfer."~~

1. If a watercraft originally acquired for tax exempt use and titled without payment of tax is subsequently utilized for nonexempt purposes, it then becomes subject to the tax based on the lower of its cost or current market value.

2. If no title is required on a watercraft, then the watercraft sales and use tax will not be levied on the watercraft~~,~~ ~~unless transferred under a lease defined as a sale under 23VAC10-230-90 or~~ unless the owner chooses to apply for a title ~~under Section 62.1-186.2(D) of the Code of Virginia (Repealed)~~ with the Department of Game and Inland Fisheries.

Unless a watercraft is exempt from the Watercraft Sales and Use Tax, title may not be issued unless the applicant shows to the satisfaction of the Department of Game and Inland Fisheries that the tax has been paid.

B. Payment and collection of tax. The tax may be paid to the Department of Taxation ~~at the Richmond headquarters or at the department's nine field district offices. Payment may also be made~~ or to the Department of Game and Inland Fisheries ~~in Richmond~~ except in cases where no title change is involved. In such cases, tax payment must be made directly to the Department of Taxation. See the department's website, www.tax.virginia.gov, for more information about payment and forms.

C. Dealer collection. The Tax Commissioner may also enter into agreements with registered dealers allowing them to collect the tax from their customers. If a registered dealer desires to collect the 2.0% Watercraft Sales and Use Tax on all his taxable transfers of watercraft, he may do so by signing an agreement with the Tax Commissioner. In agreeing with the Tax Commissioner to collect the 2.0% tax on transfers of watercraft, the dealer must agree to abide by the following regulations:

1. Collection of tax by dealers from their customers.

a. Generally. The tax must be paid to the ~~state~~ Commonwealth by the dealer, but the dealer must separately state on the invoice the amount of the tax and add the tax to the sales price or charge. ~~As to a purchaser, the tax is then deemed paid to the Department of Taxation and thereafter~~ Thereafter, the tax is a debt from the purchaser, consumer or lessee to the dealer until paid and is recoverable at law in the same manner as other debts.

b. Advertising absorption of tax prohibited. A dealer may not advertise or hold out to the public in any manner, directly or indirectly, that he will absorb all or any part of the ~~watercraft sales or use tax~~ Watercraft Sales and Use Tax, or that he will relieve the purchaser, consumer or lessee of the payment of all or any part of the tax.

c. Erroneous collection on nontaxable transactions. Any dealer collecting the ~~watercraft sales or use tax~~ Watercraft Sales and Use Tax on nontaxable transactions must transmit to the Department of Taxation such erroneously or illegally collected tax unless he can show that the tax has been refunded to the purchaser or credited to the purchaser's account.

2. Dealers' monthly returns and payment of tax.

a. Generally. Every dealer authorized by execution of "Dealer Agreement" to collect Watercraft Sales Tax is required to file a return on or before the twentieth day of the month following each reporting period even if no tax has been collected. Returns are prescribed and furnished by the Department of Taxation.

b. Payment to accompany dealer's return. At the time of filing the return, the dealer must pay the full amount of tax collected or invoiced to purchasers. Failure to pay the tax will cause it to become delinquent.

c. Penalties. A dealer who fails to file a return and pay the full amount of tax by the due date is subject by "Dealer Agreement" to a penalty of ~~5.0%~~ 6.0% of the amount due for each month or portion thereof that the failure continues, not to exceed ~~25%~~ 30%. The penalty may be waived by the Tax Commissioner if there is good cause for the failure to file and/or pay on time. Request for waiver of penalty must be made in writing to the Department of Taxation and must include all pertinent facts to support the request.

d. Interest. Interest at a rate determined in accordance with § 58.1-15 of the Code of Virginia will by "Dealer Agreement" accrue on the unpaid amount of the tax from the due date until the time of payment. Interest will accrue whether or not any penalty is waived.

3. Extension not allowed. No extension will be allowed for filing and/or paying the tax due for the month.

4. Dealer compensation not allowed. A dealer will not be allowed any deduction from the amount of the ~~two percent watercraft sales~~ 2.0% Watercraft Sales and ~~use tax~~ Use Tax due on his return to compensate him for accounting for and paying the tax.

5. See 23VAC10-230-40 B for information on payment of the tax for a boat motor.

23VAC10-230-110. Retention of documents.

A. Seller of watercraft. Any person who sells a watercraft in Virginia must retain a copy of the invoice required by § 58.1-1403 of the Code of Virginia for six years following the sale (See 23VAC10-230-100).

B. Dealer paying gross receipts tax. Any dealer taxed on gross receipts under § 58.1-1402 of the Code of Virginia (see 23VAC10-230-70) must retain a copy of all invoices for lease, charter or other usage of watercraft for six years following the transaction.

C. Invoice information therein. Each invoice must accurately describe the watercraft sold, leased or used.

1. Watercraft sales invoices must contain a complete description of the watercraft sold, including its ~~sale~~ sales price, its make, model, year, length, builder's hull number, if any, and the manufacturer's engine serial number, if an inboard; for an outboard motor, its make, model, year, horsepower, and manufacturer's serial number.

2. For purposes of a dealer's monthly or periodic invoice for lease, rental or other usage of watercraft, the required description is limited to make, model and year; provided the dealer retains a copy of the original purchase invoice for each watercraft so used. See also 23VAC10-230-100.

D. Examination by Tax Commissioner. The Tax Commissioner may examine during the usual business hours of the day records, books, papers, or other documents of any dealer or other person selling or purchasing watercraft, relating to the receipts or sales prices for any watercraft, to verify the truth and accuracy of any statement or any other information as to a particular sale, lease or other taxable transaction.

23VAC10-230-120. Credit for payment of tax.

~~A credit~~ A. Credit will be given against the Virginia Watercraft Sales and Use Tax imposed on the use of watercraft in Virginia for the amount of tax paid by the owner to another state ~~or to this State by reason of the imposition of a similar tax~~ on his purchase or use of the watercraft. The credit is primarily applicable to sales or use taxes paid by the owner on the purchase or use of a watercraft prior to its use in Virginia. ~~It has very limited application to Virginia Retail Sales and Use Tax because any watercraft purchased or used in Virginia on or after January 1, 1982, is exempt from Virginia Retail Sales and Use Tax (§ 58.1-609.1(9) of the Code of Virginia) and because any watercraft purchased in Virginia prior to January 1, 1982, is exempt from Virginia Watercraft Sales and Use Tax (§ 58.1-1404 of the Code of Virginia).~~

~~NOTE:~~ B. Credit against the tax will not be given for ~~state~~ Virginia retail sales tax paid on component parts or kits used in construction of a watercraft. Whereas watercraft constructed by commercial watermen for their own use are exempt from the tax under § 58.1-1404 of the Code of Virginia, watercraft constructed by a person other than a commercial waterman will be subject to the watercraft sales and use tax in order to be titled in Virginia.

Example 1. A moved his residence to Virginia ~~in 1981~~ and brought with him a watercraft purchased ~~in 1979~~ two years before in the state of his former residence. The watercraft was originally purchased for $20,000 and sales tax was paid in the

amount of $600 to the state of his former residence. The published pricing guide value of the watercraft when moved into Virginia was $16,000. Since the watercraft was not required to be titled in Virginia until six months or more after its acquisition, the Virginia watercraft use tax will be ~~two percent~~ 2.0% of its current market value, or $320. The credit for a similar tax paid to another state completely offsets the Virginia watercraft tax.

~~Example 2. In January 1982, B purchased a boat in Virginia which was eighteen feet long and weighed three hundred fifty pounds. Since its weight was not in excess of four hundred pounds, it did not meet the definition of a watercraft and Virginia retail sales tax in the amount of $320 based on an $8,000 purchase price was paid. Subsequently, in February 1982, marine accessories and engine were purchased and installed for $4,000 and Virginia retail sales tax was paid in the amount of $160. The boat then qualified as a "watercraft" since it then weighed in excess of four hundred pounds. It was then subject to titling requirements and to Watercraft sales tax, but no tax was due because Virginia retail sales tax paid on the original purchase of the boat exceeded the Virginia watercraft sales tax liability.~~

Example ~~3.~~ 2. X purchased a watercraft in State A which imposed no tax on the purchase; the watercraft was used in State C and a use tax was imposed by State C in the amount of $200. X then moved the watercraft to Virginia for use in this ~~State~~ Commonwealth and the Virginia watercraft use tax based on the lower of original cost or current market value was $320. X required to pay $120 Virginia watercraft use tax ($320 tax liability less $200 credit for a similar tax paid to another state.)

Example ~~4.~~ 3. Y purchased parts and materials and built a watercraft valued at $12,000 when completed and required to be titled in Virginia. The watercraft use tax liability was $240 and Y sought credit for $200 Virginia retail sales tax which he paid on parts and materials purchased to construct the watercraft. No credit was allowable because no similar tax was paid to Virginia or to another state on the watercraft. The tax paid on parts and materials ~~was~~ is not considered a similar tax paid on the purchase or use of the watercraft.

VA.R. Doc. No. R09-1543; Filed December 2, 2008, 12:11 p.m.

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 21, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2008-00002

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

ORDER SCHEDULING HEARING AND DIRECTING PARTIES AND STAFF TO FILE ADDITIONAL COMMENTS

On August 7, 2008, the State Corporation Commission ("Commission") entered an Order for Notice of Proceeding to Consider Revisions to Commission's Rules of Practice and Procedure ("Order"). In the Order, the Commission permitted interested persons to review the Commission Staff's ("Staff") proposed revisions to the Commission Rules of Practice and Procedure ("Proposed Rules") and file comments and suggestions thereon. A copy of the Proposed Rules was attached to the Order.

Seven parties filed comments[1] on the Proposed Rules in response to the Order. The parties that filed comments included Dominion, Appalachian Power Company ("Appalachian Power"), the Office of the Attorney General, Division of Consumer Counsel, Potomac Edison Company, d/b/a Allegheny Power, Columbia Gas of Virginia, Inc. ("Columbia Gas"), Washington Gas Light Company, and the Virginia Industrial Energy Users Groups ("VIEUG").[2] Columbia Gas and Dominion requested a hearing, and Appalachian Power requested that the Commission require the Staff to file a report and to permit responses by parties to other comments and the Staff report.

NOW THE COMMISSION, having considered the foregoing, finds that it is appropriate to have the Staff file a report ("Report") on the Proposed Rules and the comments thereto, permit the parties to file a response thereto, and to permit the Staff to file a reply to the responses. The Staff and parties are also encouraged to meet and attempt to narrow the areas of disagreement prior to the hearing to be scheduled in this matter.

ACCORDINGLY, IT IS ORDERED THAT:

(1) The Staff shall file a Report on the comments made by the parties in response to the Order on or before December 16, 2008.

(2) All the parties that have filed comments herein may file a response to the Staff Report and the other comments filed herein on or before January 9, 2009.

(3) The Staff may file a reply to the responses on or before January 23, 2009.

(4) A public hearing shall be convened on February 4, 2009, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive oral argument on the Proposed Rules and other filings herein.

(5) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Donald G. Owens, Esquire, and Thomas C. Walker, Jr., Esquire, Troutman Sanders LLP, 1001 Haxall Point, P.O. Box 1122, Richmond, Virginia 23218-1122; Karen L. Bell, Esquire, and Lisa S. Booth, Esquire, Dominion Resources Services, Inc., P.O. Box 26532, Richmond, Virginia 23261-6532; Vishwa B. Link, Esquire, and Andrea R. Chase, Esquire, McGuire Woods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030; Anthony Gambardella, Esquire, Woods Rogers, PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219; Charles E. Bayless, Esquire, and James R. Bacha, Esquire, Appalachian Power Company, Three James Center, Suite 702, 1051 East Cary Street, Richmond, Virginia 23219; C. Meade Browder, Jr., Senior Assistant Attorney General, and Kiva Bland Pierce, Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219; Richard D. Gary, Esquire, and Noelle J. Coates, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219; Jeffrey P. Trout, Esquire, Allegheny Power, 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601; James S. Copenhaver, Esquire, and T. Borden Ellis, Esquire, Columbia Gas of Virginia, Inc., 1809 Coyote Drive, Chester, Virginia 23836; Meera Ahamed, Esquire, Washington Gas Light Company, 101 Constitution Avenue, N.W., Washington, D.C. 20080; Louis R. Monacell, Esquire, Edward L. Petrini, Esquire, and Cliona Mary Robb, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095; and the Commission's Office of General Counsel.

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[1] One party, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion"), also filed a Notice of Participation and a Request for Hearing on the Proposed Rules.

[2] The VIEUG is comprised of the Virginia Committee for Fair Utility Rates, the Old Dominion Committee for Fair Utility Rates, and the Virginia Industrial Gas Users Association.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Final 2008 § 305(b)/303(d) Water Quality Assessment Integrated Report

The Virginia Department of Environmental Quality (DEQ) will release the Final 2008 § 305(b)/303(d) Water Quality Assessment Integrated Report (Integrated Report) by December 22, 2008.

The Integrated Report combines both the § 305(b) Water Quality Assessment and the § 303(d) Report on Impaired Waters. This report was available for public comment from June 16, 2008, through July 25, 2008. Comments were received from the public and the United States Environmental Protection Agency (EPA). In response to comments, the report was slightly revised and resubmitted to EPA on October 31, 2008, and later approved.

The final report, responses to written comments, and map images are available for download on our website at http://www.deq.virginia.gov/wqa/. Copies are available at no charge on CD-ROM (limit one per person) by request via the webpage or via phone at (804) 698-4191. These CD-ROMs include the entire final report, all of its appendices, and a digital book of maps developed from the 2008 assessment. Due to the cost of printing, hard copies are only available by special request.

Contact Information: Darryl M. Glover, Office of Water Monitoring and Assessment, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4321, FAX (804) 698-4032, or email dmglover@deq.virginia.gov.

Notice of Citizen Nomination of Surface Waters for Water Quality Monitoring

In accordance with § 62.1-44.19:5 F of the Code of Virginia, the Water Quality Monitoring Information and Restoration Act, the Virginia Department of Environmental Quality (DEQ) has developed guidance for requests from the public regarding specific segments that can be nominated for consideration to be included in the Virginia Department of Environmental Quality annual Water Quality Monitoring Plan.

Any citizen of the Commonwealth who wishes to nominate a water body or stream segment for inclusion in DEQ's Water Quality Monitoring Plan should refer to the guidance in preparation and submittal of their requests. All nominations must be received by April 30, 2009, to be considered for the 2010 calendar year. Copies of the guidance document and nomination form are available online at http://www.deq.virginia.gov/cmonitor.

Contact Information: Stuart Torbeck, Water Quality Data Liaison, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4461, FAX (804) 698-4032, or email cstorbeck@deq.virginia.gov.

Notice of Opportunity to Serve on a Technical Advisory Committee

Purpose of notice: The Department of Environmental Quality is announcing the establishment of a Technical Advisory Committee (committee) to assist the department in developing amendments to the Coal Combustion By-Products Regulation and is seeking persons interested in serving on the committee.

Deadline for submittal of requests: January 21, 2009.

Background: During the development of amendment 7 to the Solid Waste Regulations, the amendment 7 advisory committee discussed (i) incorporating the Coal Combustion By-Products Regulation into the Solid Waste Management Regulations and (ii) areas of the Coal Combustion By-Products Regulations that should be reviewed. As a result of those discussions, the amendment 7 advisory committee recommended that the Coal Combustion By-Products Regulation remain separate from the Solid Waste Management Regulations and that any necessary revisions to the program should be undertaken in a separate rulemaking.

Purpose of committee: The department is establishing this committee to review the Coal Combustion By-Products Regulation, 9VAC20-85. Specifically the committee will review and make recommendations on the entire regulation including locational restrictions, design and construction requirements, operations, closure, testing of the product prior to placement, a public notice component and other topics that may be brought up during the public comment period. The department expects that a rulemaking will be initiated to amend the regulation and the committee established in response to this notice will be used to assist in the development of a proposal for the Virginia Waste Management Board's consideration.

Contact Information: Leslie D. Beckwith, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4123, or email ldbeckwith@deq.virginia.gov.

Study to Restore Water Quality for Shellfish Growing Areas Along Oyster and Mosquito Creeks

Public meeting: January 8, 2009, at the Lancaster Community Library, 235 School Street, Kilmarnock, Virginia 22482. Public meetings will be held from 2-4 p.m. and 6-8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are holding the final public meetings for a study to restore water quality for two shellfish growing areas and a public comment opportunity.

Meeting description: Final public meetings on a study to restore water quality for shellfish growing areas along Oyster and Mosquito Creeks, which are impaired due to bacterial violations.

Description of study: Virginia agencies have worked to identify sources of the bacterial contamination in the shellfish growing waters of the (tidal) Oyster and Mosquito Creeks and their tributaries, an area totalling approximately 0.178 square

miles in Lancaster County. These streams are impaired for failure to meet the designated use of shellfish consumption because of bacterial water quality standard violations.

Stream	County	Area (miles²)	Impairment
Oyster Creek	Lancaster	0.11	Shellfish Use (Fecal Coliform) Bacteria
Mosquito Creek	Lancaster	0.068	

The study reports the current status of the creeks via sampling performed by the Virginia Department of Health, Division of Shellfish Sanitation, shellfish area condemnations, and the possible sources of bacterial contamination. The study recommends total maximum daily loads (TMDLs) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How to comment: 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, which will begin January 8, 2009, and ends on February 9, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email mjsmigo@deq.virginia.gov.

Public Meeting Relating to Fecal Bacteria Impairments in the Back Bay and North Landing Watersheds

The Department of Environmental Quality (DEQ), the Department of Conservation and Recreation (DCR), the Hampton Roads Planning District Commission, and the City of Virginia Beach invite citizens to a public meeting to discuss the development of an implementation plan (IP) to address fecal bacteria impairments in the Back Bay and North Landing Watersheds. Water quality monitoring indicates that bacteria levels in Nanney Creek, Milldam Creek, and Middle West Neck Creek violate Virginia's water quality standards. A Total Maximum Daily Load (TMDL) study for the impairments was approved by EPA in 2005 and is available on DEQ's website at http://www.deq.virginia.gov/tmdl/apptmdls/chowanrvr/chowant.pdf.

The Implementation Plan will identify ways to meet the pollutant reductions outlined in the TMDL study. A Technical Advisory Committee comprised of stakeholders from the watersheds was formed in spring 2007, and has worked over the past year to conduct additional studies in the Nanney Creek Watershed and develop a list of potential pollutant reduction actions that can be implemented in all three watersheds.

The final public meeting to review the development of the TMDL implementation plan and discuss the proposed plan will be held on: Monday, January 26, 2009, 7 p.m., Creeds Elementary School, 920 Princess Anne Road, Virginia Beach, Virginia.

The purposes of this meeting are to report the results of the ground truthing study conducted by the City of Virginia Beach in the Nanney Creek Watershed and discuss the implementation actions that the Technical Advisory Committee developed. The IP includes the corrective actions needed to reduce bacteria and the associated costs, benefits and environmental impacts. The IP also provides measurable goals and a timeline of expected achievement of water quality objectives. A copy of the draft implementation plan is available upon request.

How to comment: The formal public comment period on the IPs will end on February 27, 2009. Oral comments will be accepted and addressed at the public meeting. Written comments and inquires should include the name, address, and telephone number of the person submitting the comments and should be sent to Jennifer Howell, Department of Environmental Quality, 5636 Southern Blvd., Virginia Beach, VA 23262, telephone (757) 518-2111, FAX (757) 518-2003, or email jshowell@deq.virginia.gov or to William J. Johnston, PE, City of Virginia Beach, 2405 Courthouse Dr., Municipal Center, Bldg. 2, Virginia Beach, VA 23456, telephone (757) 385-4519, or email bjohnsto@vbgov.com.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Requests for Approval of Variances

The State Human Rights Committee considered the following requests for variances to the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services at its meeting on December 5, 2008.

The requests for approval of variances were considered from the following providers:

Specialized Youth Services

12VAC35-115-110 B 13, Time Out Western State Hospital

12VAC35-115-110 C 3, Seclusion in an Emergency

12VAC35-115-110 C 13, Seclusion or Mechanical Restraint

12VAC35-115-110 C 17, Monitoring

12VAC35-115-110 C 15, Standing Orders

For additional information please contact Margaret Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, 1220 Bank Street, Richmond, VA 23219, telephone (804) 786-3988, FAX (804) 371-2308, or email margaret.walsh@co.dmhmrsas.virginia.gov.

DEPARTMENT OF SOCIAL SERVICES

Periodic Review of Regulations

Pursuant to Executive Order Number 36 (2006), the Department of Social Services is currently reviewing 22VAC40-160, Fee Requirements for Processing Applications, to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number 36 (2006) and in the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulations, less burdensome and intrusive alternatives to the regulations, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

Written comments may be submitted until January 12, 2009, in care of Karen Cullen, Program Development Consultant, Division of Licensing Programs, 7 North 8th Street, Richmond, VA 23219, FAX (804) 726-7132, or email karen.cullen@dss.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

ERRATA

STATE AIR POLLUTION CONTROL BOARD

Titles of Regulations: **9VAC5-80. Permits for Stationary Sources.**

9VAC5-170. Regulation for General Administration.

Publication: 25:6 VA.R. 1231-1257 November 24, 2008.

Correction to Final Regulation:

Page 1242, in 9VAC5-80-670 E 2 d, line 5, unstrike "including"

Page 1247, in 9VAC5-80-1450 B 5, line 1, strike "Completion of" and insert "Complete"

VA.R. Doc. No. R09-1364; Filed November 26, 2008, 9:26 a.m.

AUCTIONEERS BOARD

Title of Regulation: **18VAC25-21. Regulations of the Virginia Auctioneers Board.**

Publication: 25:7 VA.R. 1431-1435 December 8, 2008.

Correction to Final Regulation:

Page 1431, replace the published summary with the following:

Summary:

The amendments clarify the basic qualifications for licensure by examination and licensure by reciprocity, modify the examination application procedures, and establish and modify the standards of practice and standards of conduct to identify requirements that affect the administration of, and compliance with, the board's regulations.

VA.R. Doc. No. R06-87; Filed December 9, 2008; 1:41 p.m.