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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 $179.00 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.

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

June 2009 through March 2010

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26:15	March 10, 2010	March 29, 2010

*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 Fall 2008 VAC Supplement includes final regulations published through *Virginia Register* Volume 24, Issue 24, dated August 4, 2008). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

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2 VAC 5-100-10 through 2VAC5-100-40	Repealed	25:16 VA.R. 2831	5/13/09
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2 VAC 5-325-10	Erratum	25:13 VA.R. 2565	--
2 VAC 5-330-30	Erratum	25:13 VA.R. 2565	--
2 VAC 5-330-30	Amended	25:15 VA.R. 2710	3/9/09
2 VAC 5-340-140	Erratum	25:13 VA.R. 2565	--
2 VAC 5-340-170	Erratum	25:13 VA.R. 2565	--
2 VAC 5-350-20	Erratum	25:13 VA.R. 2565	--
2 VAC 5-370-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-380-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-390-20	Erratum	25:13 VA.R. 2566	--
2 VAC 5-390-80	Erratum	25:13 VA.R. 2566	--
2 VAC 5-400-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-440-20	Erratum	25:13 VA.R. 2566	--
Title 4. Conservation and Natural Resources			
4 VAC 20-270-10 emer	Amended	25:14 VA.R. 2591	2/26/09-3/28/09
4 VAC 20-270-30 emer	Amended	25:14 VA.R. 2591	2/26/09-3/28/09
4 VAC 20-270-30	Amended	25:16 VA.R. 2831	3/26/09
4 VAC 20-270-40 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-270-40	Amended	25:16 VA.R. 2832	3/26/09
4 VAC 20-270-55 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-270-55	Amended	25:16 VA.R. 2832	3/26/09
4 VAC 20-270-60 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-395-10	Amended	25:19 VA.R. 3289	6/30/09
4 VAC 20-395-20	Amended	25:19 VA.R. 3289	6/30/09
4 VAC 20-395-30	Amended	25:19 VA.R. 3290	6/30/09
4 VAC 20-395-40	Amended	25:19 VA.R. 3290	6/30/09
4 VAC 20-490-20	Amended	25:14 VA.R. 2593	3/1/09
4 VAC 20-490-30	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-490-40	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-490-41	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-530-10 emer	Amended	25:14 VA.R. 2596	2/26/09-3/28/09
4 VAC 20-530-20 emer	Amended	25:14 VA.R. 2596	2/26/09-3/28/09
4 VAC 20-530-31 emer	Amended	25:14 VA.R. 2597	2/26/09-3/28/09
4 VAC 20-530-31	Amended	25:16 VA.R. 2833	3/26/09
4 VAC 20-530-40 emer	Amended	25:14 VA.R. 2597	2/26/09-3/28/09
4 VAC 20-560-40 emer	Amended	25:19 VA.R. 3292	5/1/09-5/30/09
4 VAC 20-620-70	Amended	25:14 VA.R. 2597	3/1/09
4 VAC 20-700-20	Amended	25:14 VA.R. 2598	3/1/09

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4 VAC 20-950-30	Amended	25:16 VA.R. 2833	4/1/09
4 VAC 20-1200-10	Added	25:16 VA.R. 2834	4/1/09
4 VAC 20-1200-20	Added	25:16 VA.R. 2834	4/1/09
4 VAC 20-1200-30	Added	25:16 VA.R. 2834	4/1/09
4 VAC 20-1210-10 emer	Added	25:16 VA.R. 2835	3/26/09-4/24/09
4 VAC 20-1210-10	Added	25:19 VA.R. 3293	4/30/09
4 VAC 20-1210-20 emer	Added	25:16 VA.R. 2835	3/26/09-4/24/09
4 VAC 20-1210-20	Added	25:19 VA.R. 3293	4/30/09
4 VAC 20-1210-30 emer	Added	25:16 VA.R. 2835	3/26/09-4/24/09
4 VAC 20-1210-30	Added	25:19 VA.R. 3293	4/30/09
4 VAC 25-31 (Forms)	Amended	25:16 VA.R. 2835	--
4 VAC 25-40-25	Amended	25:20 VA.R. 3478	7/8/09
4 VAC 25-40-90	Amended	25:20 VA.R. 3478	7/8/09
4 VAC 25-40-120	Amended	25:20 VA.R. 3478	7/8/09
4 VAC 25-40-130	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-190	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-260	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-350	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-365	Added	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-410	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-720	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-780	Amended	25:20 VA.R. 3479	7/8/09
4 VAC 25-40-800	Amended	25:20 VA.R. 3480	7/8/09
4 VAC 25-40-810	Amended	25:20 VA.R. 3481	7/8/09
4 VAC 25-40-880	Amended	25:20 VA.R. 3481	7/8/09
4 VAC 25-40-890	Amended	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-893	Added	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-925	Added	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-1095	Added	25:20 VA.R. 3482	7/8/09
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4 VAC 25-40-2790	Amended	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-2800	Amended	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-2980	Amended	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-3050	Repealed	25:20 VA.R. 3482	7/8/09
4 VAC 25-40-3060	Repealed	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3070	Repealed	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3080	Repealed	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3090	Repealed	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3110	Repealed	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3120	Repealed	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3800	Amended	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3830	Amended	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3840	Amended	25:20 VA.R. 3483	7/8/09
4 VAC 25-40-3990	Amended	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4060	Amended	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4061	Added	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4062	Added	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4063	Added	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4064	Added	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4065	Added	25:20 VA.R. 3484	7/8/09
4 VAC 25-40-4066	Added	25:20 VA.R. 3484	7/8/09

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4 VAC 25-40-4240	Amended	25:20 VA.R. 3485	7/8/09
4 VAC 25-40-4260	Amended	25:20 VA.R. 3485	7/8/09
4 VAC 25-40-4400	Amended	25:20 VA.R. 3485	7/8/09
4 VAC 25-130 (Forms)	Amended	25:16 VA.R. 2836	--
4 VAC 50-60-10	Amended	25:16 VA.R. 2838	7/1/09
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4 VAC 50-60-1150	Amended	25:16 VA.R. 2851	5/13/09
4 VAC 50-60-1160 through 4 VAC 50-60-1180	Amended	25:16 VA.R. 2853-2868	7/1/09
4 VAC 50-60-1182	Added	25:16 VA.R. 2869	7/1/09
4 VAC 50-60-1184	Added	25:16 VA.R. 2869	7/1/09
4 VAC 50-60-1186	Added	25:16 VA.R. 2870	7/1/09
4 VAC 50-60-1188	Added	25:16 VA.R. 2871	7/1/09
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5 VAC 5-20-10	Amended	25:14 VA.R. 2601	3/11/09
5 VAC 5-20-20	Amended	25:14 VA.R. 2601	3/11/09
5 VAC 5-20-80	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-90	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-100	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-120 through 5 VAC 5-20-150	Amended	25:14 VA.R. 2603-2604	3/11/09
5 VAC 5-20-170	Amended	25:14 VA.R. 2604	3/11/09
5 VAC 5-20-180	Amended	25:14 VA.R. 2605	3/11/09
5 VAC 5-20-240 through 5 VAC 5-20-280	Amended	25:14 VA.R. 2605-2608	3/11/09
Title 8. Education			
8 VAC 20-80-10 through 8VAC20-80-190	Repealed	25:16 VA.R. 2872	*****
8 VAC 20-81-10 through 8VAC20-81-340	Added	25:16 VA.R. 2872-2967	*****
8 VAC 20-521-60	Amended	25:19 VA.R. 3295	7/15/09
8 VAC 20-650-30	Amended	25:19 VA.R. 3297	7/15/09
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9 VAC 5-20-21	Amended	25:19 VA.R. 3298	6/24/09
9 VAC 5-30-15	Amended	25:19 VA.R. 3302	6/24/09
9 VAC 5-30-80	Amended	25:19 VA.R. 3302	6/24/09
9 VAC 5-80-1170	Amended	25:19 VA.R. 3302	6/24/09
9 VAC 5-80-1615	Amended	25:20 VA.R. 3492	7/23/09
9 VAC 5-80-1625	Amended	25:20 VA.R. 3503	7/23/09
9 VAC 5-80-1695	Amended	25:20 VA.R. 3504	7/23/09
9 VAC 5-80-1915	Added	25:20 VA.R. 3505	7/23/09
9 VAC 5-80-1925	Amended	25:20 VA.R. 3506	7/23/09
9 VAC 5-80-1935	Amended	25:20 VA.R. 3507	7/23/09
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9 VAC 5-80-2010	Amended	25:20 VA.R. 3508	7/23/09
9 VAC 5-80-2020	Amended	25:20 VA.R. 3518	7/23/09
9 VAC 5-80-2140	Amended	25:20 VA.R. 3518	7/23/09
9 VAC 5-80-2195	Added	25:20 VA.R. 3519	7/23/09
9 VAC 5-80-2200	Amended	25:20 VA.R. 3520	7/23/09
9 VAC 5-80-2210	Amended	25:20 VA.R. 3520	7/23/09
9 VAC 5-80-2220	Amended	25:20 VA.R. 3521	7/23/09

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9 VAC 5-80-2230	Amended	25:20 VA.R. 3522	7/23/09
9 VAC 5-80-2240	Amended	25:20 VA.R. 3522	7/23/09
9 VAC 20-80 (Forms)	Amended	25:18 VA.R. 3149	--
9 VAC 25-32-480	Erratum	25:15 VA.R. 2804	--
9 VAC 25-151-10	Amended	25:19 VA.R. 3306	6/24/09
9 VAC 25-151-40 through 9 VAC 25-151-290	Amended	25:19 VA.R. 3308-3379	6/24/09
9 VAC 25-151-310 through 9 VAC 25-151-370	Amended	25:19 VA.R. 3379-3385	6/24/09
9 VAC 25-190-10	Amended	25:19 VA.R. 3385	6/24/09
9 VAC 25-190-20	Amended	25:19 VA.R. 3386	6/24/09
9 VAC 25-190-50	Amended	25:19 VA.R. 3386	6/24/09
9 VAC 25-190-60	Amended	25:19 VA.R. 3387	6/24/09
9 VAC 25-190-65	Added	25:19 VA.R. 3388	6/24/09
9 VAC 25-190-70	Amended	25:19 VA.R. 3389	6/24/09
9 VAC 25-580 (Forms)	Amended	25:18 VA.R. 3154	--
9 VAC 25-720-50	Amended	25:20 VA.R. 3523	7/8/09
9 VAC 25-720-60	Erratum	25:19 VA.R. 3464	--
9 VAC 25-720-60	Amended	25:20 VA.R. 3531	7/8/09
9 VAC 25-720-90	Amended	25:20 VA.R. 3544	7/8/09
9 VAC 25-720-110	Amended	25:20 VA.R. 3546	7/8/09
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10 VAC 5-200-60	Amended	25:14 VA.R. 2609	3/1/09
10 VAC 5-200-110	Amended	25:14 VA.R. 2609	3/1/09
10 VAC 5-200-130	Added	25:14 VA.R. 2613	3/1/09
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11 VAC 10-20-330	Amended	25:18 VA.R. 3162	6/1/09
11 VAC 10-50-30	Amended	25:17 VA.R. 3005	5/27/09
11 VAC 10-70-20	Amended	25:15 VA.R. 2712	4/15/09
11 VAC 10-70-90	Amended	25:15 VA.R. 2712	4/15/09
11 VAC 10-110-90	Amended	25:19 VA.R. 3407	6/1/09
11 VAC 10-120-80	Amended	25:17 VA.R. 3006	5/27/09
11 VAC 10-180-10	Amended	25:17 VA.R. 3007	5/27/09
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11 VAC 10-180-70	Amended	25:17 VA.R. 3008	5/27/09
11 VAC 10-180-80	Amended	25:17 VA.R. 3009	5/27/09
11 VAC 10-180-110	Amended	25:17 VA.R. 3010	5/27/09
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12 VAC 5-230-540	Amended	25:13 VA.R. 2316	4/1/09
12 VAC 5-230-550	Amended	25:13 VA.R. 2317	4/1/09
12 VAC 5-230-560	Amended	25:13 VA.R. 2317	4/1/09
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12 VAC 30-20-90	Amended	25:14 VA.R. 2615	4/15/09
12 VAC 30-20-210	Amended	25:20 VA.R. 3571	7/23/09
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12 VAC 30-30-10	Amended	25:20 VA.R. 3577	7/9/09
12 VAC 30-40-10	Erratum	25:19 VA.R. 3464	--
12 VAC 30-40-10	Amended	25:20 VA.R. 3574	7/23/09
12 VAC 30-50-10	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-60-500	Added	25:20 VA.R. 3586	7/9/09
12 VAC 30-80-40	Amended	25:19 VA.R. 3408	7/1/09

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12 VAC 30-110-40	Amended	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-370	Amended	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-380	Repealed	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-670	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-680	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-700	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-720	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-741	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-980	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-990	Repealed	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-1000	Repealed	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-1040	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-120-70	Amended	25:20 VA.R. 3599	7/9/09
12 VAC 30-120-90	Amended	25:20 VA.R. 3600	7/9/09
12 VAC 30-120-140	Amended	25:14 VA.R. 2624	4/15/09
12 VAC 30-120-140	Amended	25:20 VA.R. 3602	7/9/09
12 VAC 30-120-211	Amended	25:20 VA.R. 3605	7/9/09
12 VAC 30-120-213	Amended	25:20 VA.R. 3608	7/9/09
12 VAC 30-120-225	Amended	25:20 VA.R. 3609	7/9/09
12 VAC 30-120-229	Amended	25:20 VA.R. 3612	7/9/09
12 VAC 30-120-237	Amended	25:20 VA.R. 3613	7/9/09
12 VAC 30-120-247	Amended	25:20 VA.R. 3614	7/9/09
12 VAC 30-120-700	Amended	25:20 VA.R. 3616	7/9/09
12 VAC 30-120-710	Amended	25:20 VA.R. 3619	7/9/09
12 VAC 30-120-754	Amended	25:20 VA.R. 3620	7/9/09
12 VAC 30-120-758	Amended	25:20 VA.R. 3621	7/9/09
12 VAC 30-120-762	Amended	25:20 VA.R. 3622	7/9/09
12 VAC 30-120-770	Amended	25:20 VA.R. 3623	7/9/09
12 VAC 30-120-900	Amended	25:20 VA.R. 3625	7/9/09
12 VAC 30-120-910	Amended	25:19 VA.R. 3410	7/1/09
12 VAC 30-120-910	Amended	25:20 VA.R. 3627	7/9/09
12 VAC 30-120-920	Amended	25:20 VA.R. 3628	7/9/09
12 VAC 30-120-970	Amended	25:20 VA.R. 3630	7/9/09
12 VAC 30-120-1500	Amended	25:20 VA.R. 3632	7/9/09
12 VAC 30-120-1550	Amended	25:20 VA.R. 3634	7/9/09
12 VAC 30-120-2000	Added	25:20 VA.R. 3636	7/9/09
12 VAC 30-120-2010	Added	25:20 VA.R. 3637	7/9/09
12 VAC 30-130-260	Amended	25:14 VA.R. 2626	4/15/09
12 VAC 30-130-270	Amended	25:14 VA.R. 2626	4/15/09
12 VAC 30-130-290	Amended	25:14 VA.R. 2627	4/15/09
12 VAC 30-130-370	Repealed	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-380	Amended	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-410	Repealed	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-540	Amended	25:14 VA.R. 2629	4/15/09
12 VAC 30-130-750	Amended	25:20 VA.R. 3576	7/23/09
12 VAC 30-130-780	Repealed	25:20 VA.R. 3576	7/23/09
12 VAC 30-130-790	Amended	25:20 VA.R. 3576	7/23/09
12 VAC 30-130-800	Amended	25:14 VA.R. 2630	4/15/09
12 VAC 30-130-820	Amended	25:14 VA.R. 2632	4/15/09
12 VAC 30-130-890	Amended	25:14 VA.R. 2633	4/15/09
12 VAC 30-130-910	Amended	25:14 VA.R. 2634	4/15/09

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12 VAC 30-141-60	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-120	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-660	Amended	25:16 VA.R. 2969	5/13/09
12 VAC 30-141-720	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-740	Amended	25:19 VA.R. 3411	7/1/09
12 VAC 30-141-760	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-150-40	Amended	25:14 VA.R. 2636	4/15/09
Title 13. Housing			
13 VAC 5-63-220	Amended	25:17 VA.R. 3013	6/1/09
13 VAC 5-100-10	Amended	25:13 VA.R. 2363	2/12/09
13 VAC 5-100-20	Amended	25:13 VA.R. 2364	2/12/09
Title 14. Insurance			
14 VAC 5-43-10	Added	25:19 VA.R. 3413	5/15/09
14 VAC 5-43-20	Added	25:19 VA.R. 3413	5/15/09
14 VAC 5-43-30	Added	25:19 VA.R. 3414	5/15/09
14 VAC 5-170-20	Amended	25:18 VA.R. 3186	5/21/09
14 VAC 5-170-30	Amended	25:18 VA.R. 3186	5/21/09
14 VAC 5-170-50	Amended	25:18 VA.R. 3188	5/21/09
14 VAC 5-170-60	Amended	25:18 VA.R. 3188	5/21/09
14 VAC 5-170-70	Amended	25:18 VA.R. 3190	5/21/09
14 VAC 5-170-75	Added	25:18 VA.R. 3194	5/21/09
14 VAC 5-170-80	Amended	25:18 VA.R. 3196	5/21/09
14 VAC 5-170-85	Added	25:18 VA.R. 3197	5/21/09
14 VAC 5-170-150	Amended	25:18 VA.R. 3199	5/21/09
14 VAC 5-170-215	Added	25:18 VA.R. 3237	5/21/09
Title 16. Labor and Employment			
16 VAC 15-21-30	Amended	25:20 VA.R. 3639	7/24/09
16 VAC 25-90-1910.9	Added	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.95	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.134	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.156	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.303	Amended	25:20 VA.R. 3640	7/15/09
16 VAC 25-90-1910.304	Amended	25:20 VA.R. 3640	7/15/09
16 VAC 25-90-1910.1001	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1003	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1017	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1018	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1025	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1026	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1027	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1028	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1029	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1030	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1043	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1044	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1045	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1047	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1048	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1050	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1051	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1052	Amended	25:20 VA.R. 3639-3640	7/15/09

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16 VAC 25-90-1915.1001	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1915.1026	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-100-1915.9	Added	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-120-1917.5	Added	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-120-1917.71	Amended	25:20 VA.R. 3641	7/15/09
16 VAC 25-130-1918.5	Added	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-130-1918.85	Amended	25:20 VA.R. 3641	7/15/09
16 VAC 25-175-1926.60	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.62	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.761	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.1101	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.1126	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.1127	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.20	Added	25:20 VA.R. 3639-3640	7/15/09
Title 18. Professional and Occupational Licensing			
18 VAC 5-21-30 emer	Amended	25:20 VA.R. 3643	5/14/09-5/13/10
18 VAC 10-20-683	Erratum	25:15 VA.R. 2804	--
18 VAC 30-20-160	Amended	25:20 VA.R. 3656	7/8/09
18 VAC 30-20-185	Added	25:20 VA.R. 3656	7/8/09
18 VAC 48-20-10 through 18 VAC 48-20-800	Added	25:20 VA.R. 3657-3678	7/9/09
18 VAC 48-60-13	Added	25:15 VA.R. 2769	5/15/09
18 VAC 48-60-17	Added	25:15 VA.R. 2769	5/15/09
18 VAC 48-60-20	Amended	25:15 VA.R. 2770	5/15/09
18 VAC 48-60-60	Amended	25:15 VA.R. 2770	5/15/09
18 VAC 60-20-16	Amended	25:17 VA.R. 3015	7/1/09
18 VAC 60-20-190	Amended	25:16 VA.R. 2970	5/13/09
18 VAC 65-20-10	Amended	25:20 VA.R. 3679	7/8/09
18 VAC 65-20-60	Amended	25:17 VA.R. 3016	7/1/09
18 VAC 65-20-60	Amended	25:20 VA.R. 3679	7/8/09
18 VAC 65-20-435	Amended	25:20 VA.R. 3679	7/8/09
18 VAC 65-20-436	Added	25:20 VA.R. 3680	7/8/09
18 VAC 65-30-180	Amended	25:17 VA.R. 3016	7/1/09
18 VAC 76-20-60	Amended	25:16 VA.R. 2971	5/13/09
18 VAC 76-20-70	Amended	25:16 VA.R. 2971	5/13/09
18 VAC 76-40-20	Amended	25:18 VA.R. 3239	7/1/09
18 VAC 90-20-35	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-25-15	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-30-100	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-50-20	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-60-20	Amended	25:17 VA.R. 3018	7/1/09
18 VAC 90-60-90	Amended	25:16 VA.R. 2972	5/13/09
18 VAC 90-60-91	Added	25:16 VA.R. 2972	5/13/09
18 VAC 90-60-92	Added	25:16 VA.R. 2973	5/13/09
18 VAC 95-20-10	Amended	25:19 VA.R. 3418	6/24/09
18 VAC 95-20-70	Amended	25:19 VA.R. 3420	7/1/09
18 VAC 95-20-175	Amended	25:19 VA.R. 3419	6/24/09
18 VAC 95-20-390	Amended	25:19 VA.R. 3419	6/24/09
18 VAC 95-30-10	Amended	25:19 VA.R. 3420	6/24/09
18 VAC 95-30-30	Amended	25:19 VA.R. 3420	7/1/09
18 VAC 105-20-60	Amended	25:18 VA.R. 3240	7/1/09
18 VAC 110-20-10 emer	Amended	25:17 VA.R. 3018	4/10/09-4/9/10

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18 VAC 110-20-21	Added	25:17 VA.R. 3025	7/1/09
18 VAC 110-20-400 emer	Amended	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-740 emer	Added	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-750 emer	Added	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-760 emer	Added	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-770 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 110-20-780 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 110-20-790 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 110-20-800 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 112-20-25	Amended	25:17 VA.R. 3025	7/1/09
18 VAC 112-20-81	Added	25:18 VA.R. 3240	6/10/09
18 VAC 112-20-90	Amended	25:18 VA.R. 3241	6/10/09
18 VAC 112-20-130	Amended	25:18 VA.R. 3241	6/10/09
18 VAC 112-20-131	Amended	25:18 VA.R. 3241	6/10/09
18 VAC 112-20-150	Amended	25:18 VA.R. 3242	6/10/09
18 VAC 115-20-45	Amended	25:20 VA.R. 3704	7/23/09
18 VAC 115-20-130	Amended	25:20 VA.R. 3704	7/23/09
18 VAC 115-50-40	Amended	25:20 VA.R. 3706	7/23/09
18 VAC 115-50-110	Amended	25:20 VA.R. 3706	7/23/09
18 VAC 115-60-50	Amended	25:20 VA.R. 3708	7/23/09
18 VAC 115-60-130	Amended	25:20 VA.R. 3709	7/23/09
18 VAC 120-40-15	Amended	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-85	Added	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-240	Amended	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-411.1	Amended	25:15 VA.R. 2775	5/14/09
18 VAC 125-20-120	Amended	25:17 VA.R. 3026	7/1/09
18 VAC 125-30-50	Amended	25:20 VA.R. 3711	7/8/09
18 VAC 125-30-80	Amended	25:17 VA.R. 3026	7/1/09
18 VAC 125-30-80	Amended	25:20 VA.R. 3712	7/8/09
18 VAC 130-20-30	Erratum	25:15 VA.R. 2804	--
18 VAC 140-20-100	Amended	25:18 VA.R. 3247	7/1/09
18 VAC 160-20-10	Amended	25:19 VA.R. 3421	7/1/09
18 VAC 160-20-74	Amended	25:19 VA.R. 3424	7/1/09
18 VAC 160-20-76	Amended	25:19 VA.R. 3424	7/1/09
18 VAC 160-20-80	Amended	25:19 VA.R. 3425	7/1/09
18 VAC 160-20-82	Added	25:19 VA.R. 3425	7/1/09
18 VAC 160-20-84	Added	25:19 VA.R. 3426	7/1/09
18 VAC 160-20-90	Amended	25:19 VA.R. 3427	7/1/09
18 VAC 160-20-94	Added	25:19 VA.R. 3429	7/1/09
18 VAC 160-20-96	Added	25:19 VA.R. 3430	7/1/09
18 VAC 160-20-97	Added	25:19 VA.R. 3431	7/1/09
18 VAC 160-20-98	Added	25:19 VA.R. 3432	7/1/09
18 VAC 160-20-102	Amended	25:19 VA.R. 3433	7/1/09
18 VAC 160-20-104	Amended	25:19 VA.R. 3433	7/1/09
18 VAC 160-20-106	Amended	25:19 VA.R. 3433	7/1/09
18 VAC 160-20-109	Amended	25:19 VA.R. 3434	7/1/09
18 VAC 160-20-140	Amended	25:19 VA.R. 3435	7/1/09
18 VAC 160-20-145	Added	25:19 VA.R. 3435	7/1/09
18 VAC 160-20-150	Amended	25:19 VA.R. 3436	7/1/09
Title 20. Public Utilities and Telecommunications			
20 VAC 5-314-10 through 20 VAC 5-314-170	Added	25:20 VA.R. 3716-3758	5/21/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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Title 22. Social Services			
22 VAC 40-35-5	Repealed	25:19 VA.R. 3438	7/1/09
22 VAC 40-35-10	Amended	25:19 VA.R. 3438	7/1/09
22 VAC 40-35-20	Amended	25:19 VA.R. 3440	7/1/09
22 VAC 40-35-40 through 22 VAC 40-35-120	Amended	25:19 VA.R. 3441-3446	7/1/09
22 VAC 40-35-125	Repealed	25:19 VA.R. 3446	7/1/09
22 VAC 40-35-126	Repealed	25:19 VA.R. 3446	7/1/09
22 VAC 40-35-127	Repealed	25:19 VA.R. 3447	7/1/09
22 VAC 40-35-128	Repealed	25:19 VA.R. 3447	7/1/09
22 VAC 40-35-130	Amended	25:19 VA.R. 3447	7/1/09
22 VAC 40-72-10	Amended	25:19 VA.R. 3448	8/1/09
22 VAC 40-72-160	Amended	25:19 VA.R. 3453	8/1/09
22 VAC 40-72-210	Amended	25:19 VA.R. 3453	8/1/09
22 VAC 40-72-660	Amended	25:19 VA.R. 3454	8/1/09
22 VAC 40-72-670	Amended	25:19 VA.R. 3455	8/1/09
22 VAC 40-170-10 through 22 VAC 40-170-230	Repealed	25:19 VA.R. 3456	7/1/09
Title 24. Transportation and Motor Vehicles			
24 VAC 30-92-10 through 24 VAC 30-92-150	Added	25:15 VA.R. 2777-2801	3/9/09
24 VAC 30-280-20 through 24 VAC 30-280-70	Repealed	25:19 VA.R. 3456	7/1/09
24 VAC 30-281-10	Added	25:19 VA.R. 3457	7/1/09
24 VAC 30-300-10	Repealed	25:19 VA.R. 3457	4/29/09
24 VAC 30-301-10	Added	25:19 VA.R. 3458	4/29/09
24 VAC 30-301-20	Added	25:19 VA.R. 3458	4/29/09

TITLE 8. EDUCATION

BOARD OF EDUCATION

Initial Agency Notice

Title of Regulation: **N/A - There are no present regulations on this subject.**

Statutory Authority: § 22.1-269 of the Code of Virginia.

Name of Petitioner: John R. Butcher, Carol A.O. Wolf.

Nature of Petitioner's Request: Requests promulgation of a regulation requiring school divisions to report annually to the Board of Education data on: the number of students with five or more unexcused absences from school; details regarding the attendance plan and conferences held regarding such attendance plans; and a summary of the outcomes of attendance enforcement proceedings.

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

Public comments may be submitted until July 14, 2009.

Agency Contact: Anne D. Wescott, Executive Assistant to the Board of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or email anne.wescott@doe.virginia.gov.

VA.R. Doc. No. R09-28; Filed June 3, 2009, 1:11 p.m.

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TITLE 12. HEALTH

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Agency Decision

Title of Regulation: **N/A - There are no present regulations on this subject.**

Statutory Authority: §§ 37.2-203 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Adopt a regulation to state that the 2003 Guidelines for the Management of Individuals Found Not Guilty By Reason of Insanity (NGRI Guidelines) are subject to the Human Rights Regulations and any provision of the NGRI Guidelines in violation, in conflict, or contrary to the Human Rights Regulations is null and void.

Agency's Decision: Request denied.

Statement of Reasons for Decision: The NGRI Guidelines are subject to the requirements in the Human Rights Regulations (12VAC35-115). There is no need to add new regulatory provisions for this purpose. The NGRI Guidelines address the privileging process. To the extent that the privileging process conflicts with any provision of the Human Rights Regulations, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services has exempted those provisions from the regulations. The commissioner has also exempted a few of the requirements of the Human Rights Regulations for persons under forensic status and persons in custody as sexually violent predators, such as prohibiting access to victim information. The commissioner has exercised this authority in accordance with 12VAC35-115-10.

Agency Contact: Wendy V. Brown, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 225-2252, FAX (804) 371-0092, or email wendy.brown@co.dmhmrsas.virginia.gov.

VA.R. Doc. No. R09-18; Filed June 8, 2009, 11:01 a.m.

Agency Decision

Title of Regulation: **None specified.**

Statutory Authority: §§ 37.2-203 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend regulations to prohibit any director of providers from applying for a variance that abridges any individual rights for filing a complaint under the complaint process under the Human Rights Regulations. Individuals in this context means individuals receiving services from providers.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board does not believe that the right to request a variance should be restricted. The variance section of 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 (Human Rights Regulations, 12VAC35-115-220) is intended to protect individuals receiving services when the implementation of these regulations may cause harm. The process for pursuing a variance is extensive and the Human Rights Regulations currently require all variances to be approved by the State Human Rights Committee.

Agency Contact: Wendy V. Brown, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 225-2252, FAX (804) 371-0092, or email wendy.brown@co.dmhmrsas.virginia.gov.

VA.R. Doc. No. R09-19; Filed June 8, 2009, 11:02 a.m.

Agency Decision

Title of Regulation: **N/A - There are no present regulations on this subject.**

Statutory Authority: §§ 37.2-203 and 37.2-400 of the Code of Virginia.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Adopt regulations to require mental health facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services to physically post up information about the Virginia Freedom of Information Act. This information layout is outlined in § 2.2-3704.1 of the Code of Virginia. It includes the rights of the requester for requesting public records; the obligations of public bodies to process requests for public records; contact information for making requests for public records from the given public body; most commonly used public record exemptions; and recourse to the courts for violations of the Virginia Freedom of Information Act.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board has determined that this request may be appropriately addressed by policy rather than regulation. The Department of Mental Health, Mental Retardation and Substance Abuse Services has complied with the Virginia Freedom of Information Act (FOIA) which requires all state public bodies to post information on their websites informing the public about procedures for requesting public records and responding to those requests. The board understands that some individuals receiving services in state facilities do not have access to the Internet through which they may obtain information about FOIA. Therefore, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services has issued a policy directive to the state facility directors encouraging the posting of FOIA information on facility websites and throughout the facility and specifically on patient units. The board affirms the commissioner's policy and believes that this policy directive addresses the intent of this petition.

Agency Contact: Wendy V. Brown, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 225-2252, FAX (804) 371-0092, or email wendy.brown@co.dmhmrsas.virginia.gov.

VA.R. Doc. No. R09-20; Filed June 8, 2009, 11:02 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Initial Agency Notice

Title of Regulation: **18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.**

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

Name of Petitioner: Robert J. Haddad.

Nature of Petitioner's Request: To amend regulations to (i) eliminate the distinction between conscious sedation and deep sedation since deep sedation is a likely result; (ii) institute a permitting process with inspection of dental offices to ensure they are appropriately equipped to handle an emergency situation; and (iii) create an Anesthesia Review Committee to assist the profession and the public with issues relating to anxiety/pain control/sedation in dentistry.

Agency's Plan for Disposition of the Request: The board is requesting public comment on the petition to amend rules to amend regulations relating to sedation and anesthesia. Following a public comment period, the board will consider its action on the petition at its meeting on September 11, 2009.

Comments may be submitted until July 22, 2009.

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

VA.R. Doc. No. R09-27; Filed May 26, 2009, 9:44 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending the following regulations: **9VAC25-630, Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management.** The purpose of the proposed action is to reissue the existing Virginia Pollution Abatement (VPA) General Permit for Poultry Waste Management. The current VPA general permit expires on November 30, 2010. The VPA General Permit Regulation for Poultry Waste Management governs the management of poultry feeding operations that confine 200 or more animal units (20,000 chickens or 11,000 turkeys) and establishes the utilization, storage, tracking, and accounting requirements related to poultry waste.

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

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Public Comments: Public comments may be submitted until July 22, 2009.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4116, or email betsy.bowles@deq.virginia.gov.

VA.R. Doc. No. R09-2006; Filed June 2, 2009, 5:00 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: **4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-30).**

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

Effective Dates: June 1, 2009, through June 30, 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:

This emergency amendment establishes that oysters raised in caged aquaculture by licensed aquaculture facilities on the seaside of Eastern Shore seed areas shall be exempt from the requirement to be at least three inches in shell height.

4VAC20-260-30. Minimum cull size.

In order to encourage a continued supply of marketable oysters, minimum size limits are hereby established. Undersized oysters or shells shall be returned immediately to their natural beds, rocks, or shoals where taken. When small oysters are adhering so closely to the shell of the marketable oyster as to render removal impossible without destroying the young oyster, then it shall not be necessary to remove it. Allowances for undersized oysters and shells incidentally retained during culling are found in 4VAC20-260-40.

1. Oysters taken from clean cull areas shall not have shells less than three inches in length.

2. In the James River seed areas, there shall be no size limit on oysters harvested for replanting as seed oysters and seed oysters shall not be marketed for direct consumption.

3. In the James River seed areas, the shells of oysters harvested for direct consumption shall not be less than three inches in length.

4. On the seaside of Eastern Shore seed area, the shells of oysters marketed for direct consumption shall not be less than three inches in length. The provisions of this subdivision shall not apply to oysters raised in caged aquaculture by licensed aquaculture facilities.

5. In the Rappahannock River, the shells of oysters harvested for direct consumption, from the areas known as Russ' Rock and Carter's Rock, shall not be less than 2-1/2 inches in length.

VA.R. Doc. No. R09-1998; Filed May 28, 2009, 12:08 p.m.

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: **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-40, 4VAC20-270-50, 4VAC20-270-58).**

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

Effective Date: June 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 (i) create a fall closure to the harvest by any gear of female crabs from November 21 through November 30; (ii) establish a 15% reduction in crab pots (relative to 2007 limits per each of the five license categories) rather than the 30% reductions currently in effect; (iii) establish that any agent convicted by a court of two crab fishery-related violations within a 12-month period may be precluded from serving as an agent; and (iv) proposes that the licensee who has authorized an agent who is convicted by a court of two crab fishery-related violations within a 12-month period shall appear before the commission for a license-revocation hearing.

4VAC20-270-40. Season limits.

A. The lawful season for the harvest of male crabs shall be March 17 through November 30. The lawful season for the harvest of female crabs shall be March 17 through November ~~30~~ 20.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season, as described in subsection A of this section.

C. It shall be unlawful for any person knowingly to place, set, fish or leave any hard crab pot or peeler crab pot in any tidal waters of Virginia from December 1 through March 16.

D. It shall be unlawful for any person knowingly to place, set, fish or leave any fish pot in any tidal waters from March 12 through March 16, except as provided in subdivisions 1 and 2 of this subsection.

1. It shall be lawful for any person to place, set, or fish any fish pot in those Virginia waters located upriver of the following boundary lines:

a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.

b. In the York River the boundary lines shall be the Route 33 bridges at West Point.

c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.

d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland, to Dahlgren, Virginia.

2. This subsection shall not apply to lawful eel pots as described in 4VAC20-500-50.

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

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

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

1. Up to 85 crab pots.

2. Up to 127 crab pots.

3. Up to 170 crab pots.

4. Up to 255 crab pots.

5. Up to 425 crab pots.

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

~~1. Up to 70 crab pots.~~

~~2. Up to 105 crab pots.~~

~~3. Up to 140 crab pots.~~

~~4. Up to 210 crab pots.~~

~~5. Up to 350 crab pots.~~

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

4VAC20-270-58. License revocation.

A. Any person convicted by a court of two crab fishery-related violations, may be subject to having his license(s) to take crabs revoked in accordance with the provisions of § 28.2-232 of the Code of Virginia.

B. Any person serving as an agent who is convicted by a court of two crab fishery-related violations may be subject to having his authority to serve as an agent revoked by the commission.

C. Any crab licensee whose agent is convicted by a court of two crab fishery-related violations may be subject to having any of his licenses to take crabs revoked by the commission.

VA.R. Doc. No. R09-1990; Filed May 28, 2009, 12:17 p.m.

Final Regulation

Title of Regulation: **4VAC20-320. Pertaining to the Taking of Black Drum (amending 4VAC20-320-70).**

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: June 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 provide the commissioner, or his designee, the authority to grant exceptions and transfer requests for a Black Drum Harvesting Permit, and eliminate the March 1 deadline for submission of requests to transfer.

4VAC20-320-70. Commercial harvest permits required.

A. It shall be unlawful for any registered commercial fisherman to take, catch, sell, or possess more than one black drum per day, without first having obtained a Black Drum Harvesting and Selling Permit from the Marine Resources Commission. Such permit shall be completed in full by the permittee and a copy kept in the possession of the permittee while fishing and selling black drum. Permits shall only be issued to applicants meeting the following criteria:

1. The applicant shall be a registered commercial fisherman and shall have held a Black Drum Permit in at least one year from 1988 to 1993;

2. The applicant shall have documented catch of black drum in at least one year for which a Black Drum Permit was held from 1988 to 1993; and

3. The applicant shall have reported, in accordance with this chapter, any black drum fishery activity in 1992 and 1993, if a Black Drum Permit was held in those years.

Nothing in this subsection is intended to prohibit a registered commercial fisherman fishing pursuant to 4VAC20-320-40 as a legally eligible recreational fisherman from possessing only one black drum not to be sold.

B. Any registered commercial fisherman who is not permitted to harvest black drum, in accordance with subsection A of this section, may harvest, possess, and sell one black drum per day. Any such daily harvest shall not be a part of the commercial harvest quota but shall be reported to the VMRC as specified in 4VAC20-610.

C. The ~~Marine Resources Commission~~ commissioner, or his designee, may grant exceptions to the limited entry criteria listed in subsection A of this section based upon scientific, economic, biological, sociological, and hardship factors. Any person requesting an exception shall provide in writing an explanation for exception and all pertinent information relating to the criteria in subsection A of this section. ~~All exception requests must be received by the Marine Resources Commission prior to March 1 of the year for which a permit is requested.~~

D. Requests to transfer a Black Drum Harvesting Permit shall be documented on a form provided by the Marine Resources Commission, notarized by lawful notary public, and subject to approval by the commissioner, or his designee.

~~D.~~ E. It shall be unlawful for any person, firm, or corporation to buy any black drum from the harvester without first having obtained a Black Drum Buying Permit from the Marine Resources Commission. Such permit shall be completed in full by the permittee and a copy kept in possession of the permittee while buying black drum.

~~E.~~ F. Any person, firm or corporation that has black drum in possession with the intent to sell must either be a permitted harvester or buyer, or must be able to demonstrate that those fish were imported from another state or purchased from a permitted buyer or seller.

VA.R. Doc. No. R09-1979; Filed May 28, 2009, 12:24 p.m.

Final Regulation

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

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

Effective Date: June 1, 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 amendment establishes the 2009 commercial bluefish quota as 1,155,945 pounds.

4VAC20-450-30. Commercial landings quota.

A. During the period of January 1 through December 31, commercial landings of bluefish shall be limited to ~~1,048,366~~ 1,155,945 pounds.

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

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

VA.R. Doc. No. R09-1978; Filed May 28, 2009, 12:31 p.m.

Final Regulation

Title of Regulation: **4VAC20-650. Establishment of Oyster Sanctuary Areas (amending 4VAC20-650-10, 4VAC20-650-20, 4VAC20-650-30).**

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

Effective Date: June 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 five new shellfish sanctuaries in Northampton and Accomack Counties on the Seaside Eastern Shore (on and adjacent to the Nature Conservancy).

4VAC20-650-10. Purpose.

The purpose of this chapter is to protect and promote the oyster resources within the designated sanctuary areas and to protect oyster replenishment efforts ~~on all public oyster grounds~~.

4VAC20-650-20. Oyster ~~replenishment~~ sanctuary areas.

The following oyster sanctuary areas are established:

~~A. The following Oyster Sanctuary Area is established:~~ 1. The Wreck Shoals-James River Oyster Sanctuary Area ~~shall consist~~ consisting of all public oyster grounds with a boundary defined as: beginning at Corner 1 of Public Ground No.1-Warwick County (Lat 37° 04.520'N, Lon 76° 33.7333'W-NAD 1983); thence southeasterly to Deep Creek Channel Marker "2" (Lat 37° 03.609'N, Lon 76° 32.102'W); thence south-southwesterly to James River Channel Marker "5" (Lat 37° 02.345'N, Lon 76° 32.769'W); thence southwesterly to the chimney of a beach house east of the Luter airstrip (Lat 37° 01.666'N, Lon 76° 35.136'W); thence northerly to James River Channel Marker "12" (Lat 37° 03.323'N, Lon 76° 35.169'W); thence northeasterly to Corner 190 of Plat File 16734 (Lat 37° 04.904'N, Lon 76° 34.254'W); thence southeasterly to Corner 1 of Public Ground 1-Warwick County, the point of beginning.

2. Smith Island Sanctuary - Beginning at a point in Smith Island Bay near the western shore of Smith Island, said point being approximately 9,900 feet north-northwest of the Cape Charles Light House and the northern most point on Ballard Fish and Oyster Co., Inc. oyster lease, plat 16613, said point being corner 85, having NAD 83 Geographic Coordinates of 37° 08.3987390'N, 75° 54.0094551'W; thence in a northeasterly direction along the inshore oyster lease line of Thomas J. O'Conner, III, plat 17720, to corner 106, 37° 08.5079488'N, 75° 53.9121013'W; thence northeasterly to corner 107, 37° 08.5406502'N, 75° 53.8494541'W; thence east-northeasterly to corner 207, 37° 08.5420829'N, 75° 53.8281776'W; thence east-northeasterly along the inshore oyster lease line of Mark R. Heath, plat 17721, to corner 108, 37° 08.5446005' N, 75° 53.7907806'W; thence north-northeasterly to corner 109, 37° 08.5895883'N, 75° 53.7864524'W; thence northeasterly to corner 110, 37° 08.6921483'N, 75° 53.6226465'W; thence northeasterly to corner 111, 37° 08.7546771'N, 75° 53.4568175'W; thence northeasterly to corner 112, 37° 08.7754748'N, 75° 53.3619827'W; thence southeasterly along the inshore oyster lease line of H. M. Terry Co., Inc. to corner 18, 37° 08.7544364'N, 75° 53.3207742'W; thence southeasterly to corner 17, 37° 08.7306590'N, 75° 53.2980718'W; thence southeasterly to corner 16, 37° 08.6251318'N, 75° 53.1579039'W; thence easterly to corner 15, 37° 08.6225028'N, 75° 53.1025432'W; thence north-northeasterly to corner 14, 37° 08.6626612'N, 75° 53.0854858'W; thence northwesterly to corner 153, 37° 08.6768312'N, 75° 53.1394736'W; thence along the inshore oyster lease line of Daniel Scott Long, plat 16802, northeasterly to corner 152, 37° 08.7156785'N, 75° 53.0819599'W; thence northeasterly to corner 151, 37° 08.8330482'N, 75° 52.7283538'W; thence, south-southeasterly onto Smith Island to corner 1, 37° 08.4630004'N, 75° 52.6679990'W; thence, southwesterly to corner 2, 37° 07.9690002'N, 75° 53.0919992'W; thence southwesterly to corner 3, 37° 07.9080005'N, 75° 53.4390002'W; thence southwesterly to corner 4, 37° 07.7800009'N, 75° 53.6839996'W; thence southwesterly to corner 5, 37° 07.6540002'N, 75° 54.3200009'W; thence southwesterly to corner 6, 37° 07.3169996'N, 75° 54.6700007' W.; thence northwesterly, off shore, to corner 170 of Mark R. Heath's oyster lease, plat 17456, 37° 07.3524313'N, 75° 54.6976587'W; thence along the inshore line of said parcel, northwesterly to corner 169, 37° 07.3528695'N, 75° 54.7176135'W; thence north-northeasterly to corner 168, 37° 07.4495084'N, 75° 54.7100342'W; thence northeasterly to corner 92, 37° 07.5477653'N, 75° 54.5615711'W; thence northeasterly along the inshore oyster lease line of Ballard Fish and Oyster Co., Inc., plat 16613, to corner 91, 37° 07.6416382'N, 75° 54.4402745'W; thence northeasterly to corner 90, 37° 07.6890220'N, 75° 54.3527929'W; thence northeasterly to corner 89, 37° 07.7661702'N, 75° 54.0839677'W; thence northeasterly along the inshore oyster lease line of Henry S. Jones, Jr., plat 19450, to corner 254, 37° 07.7879690'N, 75° 53.9324560'W; thence northerly to corner 253, 37° 07.8109207'N, 75° 53.9343385'W; thence westerly to corner 252, 37° 07.8094111'N, 75° 53.9916726'W; thence north-northwesterly to corner 251, 37° 07.8582020'N, 75° 53.9962243'W; thence west-southwesterly to corner 250, 37° 07.8535649'N, 75° 54.0512576'W; thence northwesterly to corner 249, 37° 07.9116397'N, 75° 54.0935389'W; thence westerly to corner 248, 37° 07.9113922'N, 75° 54.0976427'W; thence north-northwesterly along the inshore oyster lease line of Ballard Fish and Oyster Co., Inc., plat 16613, to corner 88, 37° 08.0660474'N, 75° 54.1122194'W; thence northeasterly to corner 87, 37° 08.1821017'N, 75° 54.0516546'W; thence north-northeasterly to corner 86, 37° 08.2555945'N, 75° 54.0483544'W; thence north-northeasterly to corner 85, 37° 08.3987390'N, 75° 54.0094551'W, said point being the point of beginning.

3. Cobb Island Oyster Sanctuary - Beginning at a point in Cobb Bay, near the western shore of Cobb Island and being the southern most point of the oyster lease of John R. Mariner, plat 16866, corner 355, said corner having NAD 83 Geographic Coordinates of 37° 19.3528688'N, 75° 45.9182774'W; thence northeasterly along the inshore line of said oyster lease to corner 354, 37° 19.4051876'N, 75° 45.8386060'W; thence northeasterly to corner 353, 37° 19.5182900'N, 75° 45.6662561'W; thence northeasterly to corner 352, 37° 19.6443229'N, 75° 45.5201098'W; thence southeasterly to a point on Cobb Island, corner 5, 37° 19.2960000'N, 75° 45.3319992'W; thence southwesterly to corner 6, 37° 19.2109998'N, 75° 45.4150006'W; thence southwesterly to a point west of Cobb Island, corner 7, 37°

18.9289998'N, 75° 45.5570001'W; thence southwesterly to corner 8, 37° 18.8050003'N, 75° 45.7710008'W; thence southwesterly to corner 9, 37° 18.2650004'N, 75° 46.3249991'W; thence southwesterly to corner 10, 37° 18.1689997'N, 75° 46.6559996'W; thence northerly to corner 11, 37° 18.6160000'N, 75° 46.6279994'W; thence northeasterly to corner 12, 37° 18.7500009'N, 75° 46.5019997'W; thence northeasterly to the western most point of the oyster lease of J. Steve McCready, plat 16371, corner 90, 37° 18.8870550'N, 75° 46.1567968'W; thence southeasterly along the lease line to corner 89, 37° 18.8653681'N, 75° 46.1241425'W; thence southeasterly along the oyster lease line of R&C Seafood, plat 16986 to corner 374, 37° 18.7448511'N, 75° 46.0512077'W; thence northeasterly to corner 373, 37° 18.9339657'N, 75° 45.7191531'W; thence northeasterly to corner 372, 37° 18.9858220'N, 75° 45.6864128'W; thence northwesterly to corner 355, 37° 19.3528688'N, 75° 45.9182774'W, said point being the point of beginning.

4. Boxtree Oyster Sanctuary - Beginning at a point in Boxtree Creek, said point being the eastern most point on the oyster lease of Edwin E. Brady and Marion Brady, Jr., plat 16344, corner 7, said corner having NAD 83 Geographic Coordinates of 37° 23.7990757'N, 75° 51.5561984'W; thence southeasterly to corner 2, 37° 23.6849997'N, 75° 51.4280006'W; thence southerly to a point in Ramshorn Bay, corner 3, 37° 23.5570008'N, 75° 51.4309991'W; thence southeasterly to corner 4, 37° 23.5009994'N, 75° 51.3100008'W; thence southeasterly to corner 5, 37° 23.4050000'N, 75° 51.2529994'W; thence southwesterly to corner 6, 37° 22.8749994'N, 75° 51.5500012'W; thence westerly to a point on shore, corner 8, 37° 22.9039994'N, 75° 52.3000000'W; thence northeasterly to corner 7, 37° 23.7990757'N, 75° 51.5561984'W, said point being the point of beginning.

5. Parramore Island Sanctuary - Beginning at a point, corner 1, in Swash Bay, near the western shore of Parramore Island, being approximately 1,550 feet northeast of the northern most point of the oyster lease of John Barr, plat 19331, said corner having NAD 83 Geographic Coordinates of 37° 32.7759991'N, 75° 39.1639995'W; thence in a east-southeasterly direction, onto Parramore Island, to corner 2, 37° 32.7529993'N, 75° 39.0129998'W; thence south-southeasterly to, a point on shore, corner 3, 37° 32.2970002'N, 75° 39.0090007'W; thence northwesterly, off shore, to corner 4, 37° 32.3579996'N, 75° 39.1610007'W; thence north-northwesterly to corner 1, 37° 32.7759991'N, 75° 39.1639995'W, said point being the point of beginning.

6. Hillcrest Oyster Sanctuary - Beginning at a point in Brockenberry Bay, on the south side of the entrance channel to Oyster Slip and approximately 139 feet south-southwest of Day Marker 14, said point being corner 1, having NAD 83 Geographic Coordinates of 37° 17.3320003'N, 75° 55.1269999'W; thence southeasterly to corner 2, 37° 17.2680001'N, 75° 54.8050006'W; thence east-northeasterly to corner 3, 37° 17.3050000'N, 75° 54.5899996'W; thence northeasterly to corner 4, 37° 17.4090006'N, 75° 54.5039998'W; thence northeasterly to corner 5, 37° 17.5909997'N, 75° 54.4389995'W; thence northeasterly to corner 6, 37° 17.7330004'N, 75° 54.2999997'W; thence south-southeasterly to corner 7, 37° 17.5039998'N, 75° 54.0680001'W; thence south-southeasterly to corner 8, 37° 17.3660002'N, 75° 53.9980006'W; thence south-southeasterly to corner 9, 37° 16.8299992'N, 75° 53.9940006'W; thence south-southwesterly to corner 10, 37° 16.4400007'N, 75° 54.0729995'W; thence northwesterly to corner 11, 37° 16.6400008'N, 75° 54.3490009'W; thence west-northwesterly to corner 12, 37° 16.7200007'N, 75° 54.5290004'W; thence west-southwesterly to corner 13, 37° 16.7550008'N, 75° 55.1040003' W; thence west-southwesterly to corner 14, 37° 16.7039996'N, 75° 55.6450007'W; thence northeasterly to corner 15, 37° 17.0609995'N, 75° 55.0360003'W; thence northeasterly to corner 16, 37° 17.1370004'N, 75° 54.9509998'W; thence northwesterly to corner 17, 37° 17.2660006' N, 75° 55.0820004'W; thence west-southwesterly to corner 18, 37° 17.2610009'N, 75° 55.2330009'W; thence northerly to corner 19, 37° 17.2979996'N, 75° 55.2310007'W; thence northeasterly to corner 1, 37° 17.3320003'N, 75° 55.1269999'W, said point being the point of beginning.

~~B. Constructed~~ 7. All constructed oyster ~~reefs include all reefs constructed and~~ reef sanctuary areas marked by a "no harvesting" sign provided by the Conservation and Replenishment Department.

4VAC20-650-30. Closure of sanctuary areas.

A. All Oyster Sanctuary Areas shall be closed to the harvest of oysters, except that Seaside of the Eastern Shore Oyster Sanctuary Areas shall be closed to the harvest of all shellfish. Any person harvesting oysters or shellfish from the specified areas shall be guilty of a violation of this chapter.

B. It shall be unlawful for any person to possess any gear that could be used to harvest shellfish~~, within 100 feet of~~ on public or unassigned oyster grounds~~, in the area surrounding~~ within 100 feet of any oyster sanctuary area, and such possession shall be considered as prima facie evidence of a violation of this chapter.

VA.R. Doc. No. R09-1906; Filed May 28, 2009, 12:50 p.m.

Final Regulation

Title of Regulation: **4VAC20-670. Pertaining to Recreational Gear Licenses (amending 4VAC20-670-20, 4VAC20-670-25, 4VAC20-670-30, 4VAC20-670-40).**

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

Effective Date: June 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 amendment establishes a five-pot license to take or possess one bushel of hard crabs and two dozen peeler crabs during June 1 through September 15 season.

4VAC20-670-20. Recreational gear licenses.

A. Any person desiring to take or catch finfish or shellfish for recreational purposes in the tidal waters of Virginia using commercial gear authorized under § 28.2-226.1 of the Code of Virginia shall first obtain the license for the appropriate gear.

B. Any license to use fishing gear for recreational purposes shall be issued to an individual for his exclusive use and shall not be transferable.

C. No person shall be issued more than one recreational gill net license, more than one recreational crab pot license, more than one crab trap license, nor more than one recreational eel pot license.

~~D. After May 1, 2008, no license to take crabs by crab pot for recreation or personal use shall be issued and any license purchased prior to May 1, 2008, shall be null and void. The commission shall establish a five pot recreational crab pot license, at such time that it determines from the Virginia-Maryland Baywide Winter Dredge Survey that the abundance of age one and older blue crabs in the Chesapeake Bay meets or exceeds an interim abundance target of 200 million crabs.~~

~~E.~~ D. No license shall be required of any person taking minnows, menhaden, or mullet with a cast net for personal use as bait which is not to be sold, traded, or bartered.

4VAC20-670-25. Harvest limits.

It shall be unlawful for any person licensed to use recreational crab pots, recreational crab trap, or recreational ordinary crab trotline, as described in 4VAC20-670-20, to take or possess more than one bushel of hard crabs and two dozen peeler crabs, in any one day, for personal use.

4VAC20-670-30. Gear restrictions.

A. It shall be unlawful for any person to use any gill net greater than 300 feet in length when licensed for recreational purposes under this chapter except as described in subsection B of this section. Any person licensed to use a recreational gill net up to 300 feet in length shall stay within 100 yards of such net when it is overboard. Failure to attend such net in this fashion is a violation of this chapter.

B. It shall be unlawful for any person to use any anchored gill net when licensed for recreational purposes under this chapter that is greater than 110 feet in length in any of the tidal waters upriver of the saltwater-freshwater boundaries. Any anchored gill net set or placed in areas upriver of the saltwater-freshwater boundaries shall be retrieved within one hour of setting or placing that gill net. Any person licensed to use a recreational anchored gill net shall stay within 100 yards of such net when it is overboard. Failure to attend such net in this fashion is a violation of this chapter, and any unattended anchored gill net shall be confiscated by the marine police officer.

C. It shall be unlawful for any person to use more than five crab pots or more than two eel pots when licensed for recreational purposes under this chapter.

D. Any law or chapter applying to the setting or fishing of commercial gill nets, cast nets, dip nets, crab pots, crab traps, or crab trot lines shall also apply to the gear licensed under this chapter when set or fished for recreational purposes, except that (i) certain commercial gear used for recreational purposes shall be marked in accordance with the provisions described in 4VAC20-670-40, (ii) the daily time limits for commercial crab potting and peeler potting established in this section shall not apply to the setting and fishing of recreational crab pots licensed under this chapter, and (iii) the closed season and area established in § 28.2-709 of the Code of Virginia shall not apply to the setting and fishing of recreational crab pots licensed under this chapter.

E. It shall be unlawful for any person to use any recreational gill net to catch and possess any species of fish whose commercial fishery is regulated by an annual harvest quota.

F. It shall be unlawful for any person using a recreational gill net, fish cast net, or fish dip net to take and possess more than the recreational possession limit for any species regulated by such a limit. When fishing from any boat, using gear licensed under this chapter, the total possession limit shall be equal to the number of persons on board legally eligible to fish multiplied by the individual possession limit for the regulated species, and the captain or operator of the boat shall be responsible for adherence to the possession limit.

G. It shall be unlawful for any person using a recreational gill net, fish cast net, or fish dip net to take and possess any fish which is less than the lawful minimum size established for that species. When the taking of any fish is regulated by different size limits for commercial and recreational fishermen, that size limit applicable to recreational fishermen or to hook-and-line fishermen shall apply to the taking of that species by persons licensed under this chapter.

H. It shall be unlawful for any person to use any ordinary crab trot line greater than 300 feet in length when licensed for recreational purposes under this chapter.

I. It shall be unlawful for any person licensed to use five crab pots under this chapter to fish those pots on Sunday or to fish those pots from September 16 through May 31.

4VAC20-670-40. Gear marking requirements.

A. Buoys of any crab pot, eel pot, gill net or ordinary crab trot line used for recreational purposes shall be marked with the licensee's last four numbers of his social security number or driver's license number, preceded by the letter "R."

B. An offshore stake of any crab trap used for recreational purposes shall be marked with the licensee's last four numbers of his social security number or driver's license number, preceded by the letter "R."

C. In accordance with subsections A and B of this section, licensees shall mark their gear in a legible and visible manner and in figures of not less than one inch in height.

VA.R. Doc. No. R09-1991; Filed May 29, 2009, 9:31 a.m.

Final Regulation

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

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

Effective Date: June 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 it is unlawful (i) to place, set, or fish more than 255 hard crab pots in the tributaries of the mainstem Chesapeake Bay; (ii) to fish more than 425 hard crab pots in the mainstem Chesapeake Bay or coastal area; and (iii) to place, set, or fish more than a combined total of 425 pots in Virginia tidal waters.

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

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

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

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

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

VA.R. Doc. No. R09-1992; Filed May 28, 2009, 1:11 p.m.

Final Regulation

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

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

Effective Date: June 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 amendment establishes a deadline for the submission of crabbing license eligibility appeals as June 9, 2009.

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. The deadline for submission to the commission of any appeal under this section shall be June 9, 2009.

VA.R. Doc. No. R09-1993; Filed May 28, 2009, 1:24 p.m.

Final Regulation

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

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

Effective Date: June 1, 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.

4VAC20-1090-30. License fees.

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

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

Summary:

The amendments modify crab pot license categories and their limits.

~~For over 255 but not more than 425 crab pots~~	~~$127.00~~
~~b. After November 30, 2008, the following crab pot licenses and fees shall be in effect:~~	
For up to ~~70~~ 85 crab pots	$48.00
For over ~~70~~ 85 but not more than ~~105~~ 127 crab pots	$79.00
For over ~~105~~ 127 but not more than ~~140~~ 170 crab pots	$79.00
For over ~~140~~ 170 but not more than ~~210~~ 255 crab pots	$79.00
For over ~~210~~ 255 but not more than ~~350~~ 425 crab pots	$127.00
HORSESHOE CRAB AND LOBSTER LICENSES	
For each person harvesting horseshoe crabs by hand	$16.00
For each boat engaged in fishing for, or landing of, lobster using less than 200 pots	$41.00
For each boat engaged in fishing for, or landing of, lobster using 200 pots or more	$166.00
CLAM HARVESTING LICENSES	
For each person taking or harvesting clams by hand, rake or with ordinary tongs	$24.00
For each single-rigged patent tong boat taking clams	$58.00
For each double-rigged patent tong boat taking clams	$84.00
For each boat using clam dredge (hand)	$19.00
For each boat using clam dredge (power)	$44.00
For each boat using hydraulic dredge to catch soft shell clams	$83.00
For each person taking surf clams	$124.00
CONCH (WHELK) HARVESTING LICENSES	
For each boat using a conch dredge	$58.00
For each person taking channeled whelk by conch pot	$51.00
FINFISH HARVESTING LICENSES	
Each pound net	$41.00
Each stake gill net of 1,200 feet in length or under, with a fixed location	$24.00
All other gill nets up to 600 feet	$16.00
All other gill nets over 600 feet and up to 1,200 feet	$24.00
Each person using a cast net or throw net or similar device	$13.00
Each fyke net head, weir, or similar device	$13.00
For fish trotlines	$19.00
Each person using or operating a fish dip net	$9.00
On each haul seine used for catching fish, under 500 yards in length	$48.00
On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	$146.00
For each person using commercial hook and line	$31.00
For each person using commercial hook and line for catching striped bass only	$31.00
On each boat or vessel under 70 gross tons fishing with purse net, per gross ton, but not more than $249	$4.00
On each boat or vessel over 70 gross tons fishing with purse net, per gross ton. Provided the maximum license fee for such vessels shall not be more than $996	$8.00
For up to 100 fish pots or eel pots	$19.00
For over 100 but not more than 300 fish pots or eel pots	$24.00
For over 300 fish pots or eel pots	$62.00
2. COMMERCIAL GEAR FOR RECREATIONAL USE.	
Up to five crab pots	$36.00
Crab trotline (300 feet maximum)	$10.00
One crab trap or crab pound	$6.00
One gill net up to 300 feet in length	$9.00
Fish dip net	$7.00
Fish cast net	$10.00
Up to two eel pots	$10.00

3. SALTWATER RECREATIONAL FISHING LICENSE.	
Individual License	$12.50
Temporary 10-Day License	$5.00
Recreational boat	$38.00
Head Boat/Charter Boat, six or less passengers	$190.00
Head Boat/Charter Boat, more than six passengers plus $5.00 per person over six	$190.00
Rental Boat, per boat, with maximum fee of $635	$9.00
Commercial Fishing Pier (Optional)	$571.00
Disabled Resident Lifetime Saltwater License	$5.00
Reissuance of Saltwater Recreational Boat License	$5.00
Combined Sportfishing License to fish in all inland waters and tidal waters of the Commonwealth during open season	
Residents	$24.50
Nonresidents	$42.50
Combined Sportfishing Trip License to fish in all inland waters and tidal waters of the Commonwealth during open season, for five consecutive days	
Residents	$10.50
Nonresidents	$15.50
Individual Lifetime License	$250.00
Individual Lifetime License age 45 - 50	$120.00
Individual Lifetime License age 51 - 55	$90.00
Individual Lifetime License age 56 - 60	$60.00
Individual Lifetime License age 61 - 64	$30.00

VA.R. Doc. No. R09-1994; Filed May 28, 2009, 1:30 p.m.

Final Regulation

Title of Regulation: **4VAC20-1120. Pertaining to Tilefish and Grouper (adding 4VAC20-1120-31, 4VAC20-1120-32).**

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

Effective Date: July 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 amendment establishes a requirement to obtain a Tilefish and Grouper Landing Permit to possess and land grouper and tilefish in Virginia and also requires the reporting of recreational harvests of tilefish and grouper when landed in Virginia.

4VAC20-1120-31. Recreational landing permit.

It shall be unlawful to possess aboard or to land from any private recreational fishing vessel, charter boat, or head boat, any tilefish or grouper harvested recreationally without first having obtained a Tilefish and Grouper Landing Permit for that vessel from the Marine Resources Commission. Such permit shall be completed in full by the vessel owner or operator, approved by the commissioner or his designee, and a copy shall be kept with the permittee while tilefish or grouper is in the possession of that permittee.

4VAC20-1120-32. Recreational mandatory harvest reporting.

A. It shall be unlawful for any registered Tilefish and Grouper Landing Permittee, as described in 4VAC20-1120-31, to fail to fully report harvests and related information as set forth in this chapter and as provided by 4VAC20-610-60.

B. Registered Tilefish and Grouper Landing Permittees shall complete a daily form that accurately enumerates and legibly describes that permittee's daily harvest from Virginia tidal and federal waters. The form used to record daily harvest shall be that provided by the commission or approved by the commission.

C. Registered Tilefish and Grouper Landing Permittees shall submit a monthly harvest report to the commission no later than the fifth day of the following month. This report shall be accompanied by the daily harvest records described in subsection D of this section. Completed forms shall be mailed or delivered to the commission or other designated locations.

D. The monthly harvest report and daily harvest records from registered Tilefish and Grouper Landing Permittees shall include the name and signature of the registered Tilefish and Grouper Landing Permittee and his license number; date of harvest; city or county of landing; water body fished; gear type and amount used; number of hours fished; number of individuals on board, including captain; species harvested; number of discard by species; live weight of each individual species harvested; and vessel identification (Coast Guard documentation number, Virginia license number, or hull/VIN number).

VA.R. Doc. No. R09-1989; Filed May 29, 2009, 9:36 a.m.

Final Regulation

Title of Regulation: **4VAC20-1140. Prohibition of Crab Dredging in Virginia Waters (amending 4VAC20-1140-20).**

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

Effective Date: June 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 prohibit crab dredging in Virginia's waters from December 1, 2009, through March 31, 2010.

4VAC20-1140-20. Crab dredging prohibited.

A. ~~The season to use a dredge for catching crabs is closed~~ In accordance with the provisions of § 28.2-707 of the Code of Virginia, the crab dredging season of December 1, 2009, through March 31, 2010, is closed, and it shall be unlawful to use a dredge for catching crabs from the waters of the Commonwealth during that season.

~~B. It shall be unlawful for any person to use a dredge for catching crabs from the waters of the Commonwealth.~~

~~C.~~ B. The following regulations that pertain to the crab dredge fishery or activities associated with crab dredging are repealed:

4VAC20-40, "Pertaining to Crab Catch Limits"

4VAC20-90, "Pertaining to Dredging for Crabs"

4VAC20-270-30 C, Daily Time Limits, "Pertaining to Crabbing"

4VAC20-750, "Pertaining to Crab Dredge Sales"

4VAC20-752-30 A, Harvest Restrictions. "Pertaining to Blue Crab Sanctuaries"

4VAC20-1090-30 1, Commercial Licenses: Blue Crab Harvesting and Shedding Licenses--For each boat used for taking or catching hard crabs with dredges. "Pertaining to Licensing Requirements and License Fees"

VA.R. Doc. No. R09-1972; Filed May 28, 2009, 1:46 p.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Proposed Regulation

Title of Regulation: **4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-700, 4VAC50-60-720 through 4VAC50-60-840; adding 4VAC50-60-825; repealing 4VAC50-60-710).**

Statutory Authority: § 10.1-603.2:1 of the Code of Virginia.

Public Hearing Information:

June 30, 2009 - 7 p.m. - Hungry Mother State Park, Hemlock Haven Conference Center, 380 Hemlock Haven Lane, Marion, VA

July 1, 2009 - 7 p.m. - Augusta County Government Center, Board of Supervisors Meeting Room, 18 Government Center Lane, Verona, VA

July 7, 2009 - 7 p.m. - City of Manassas, City Council Chambers, 9027 Center Street, Manassas, VA

July 9, 2009 - 7 p.m. - City of Hampton, City Council Chambers, 22 Lincoln Street, 8th Floor, Hampton, VA

July 14, 2009 - 7 p.m. - Virginia General Assembly Building, 910 Capitol Street, Senate Room B, Richmond, VA

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

Agency Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Basis: The Virginia Stormwater Management Program was created by Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177). This action transferred the responsibility for the permitting programs for Municipal Separate Storm Sewers (MS4s) and construction activities from the State Water Control Board and the Department of Environmental Quality to the Virginia Soil and Water Conservation Board and the Department of Conservation and Recreation. This federally authorized program is administered in accordance with requirements set forth in the federal Clean Water Act (33 USC § 1251 et seq.) as well as the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia).

Section 10.1-603.2:1 of the Code of Virginia speaks to the powers and duties of the Virginia Soil and Water Conservation Board. Subdivision 2 of § 10.1-603.2:1 of the Code of Virginia authorizes the Virginia Soil and Water Conservation Board to delegate to the department or an approved locality the implementation of the Virginia

Stormwater Management Program. Section 10.1-603.3 of the Code of Virginia (as it will read effective July 1, 2009) requires establishment of stormwater management programs by localities. The board must amend, modify, or delete provisions of the Virginia Stormwater Management Program (VSMP) Permit Regulations to allow localities to implement local stormwater management programs. Additionally, enactment clause 2 of Chapter 18 of the 2009 Virginia Acts of Assembly stipulates that "the regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria, and that is referenced in subsections A and B of § 10.1-603.3 of this act, shall not become effective prior to July 1, 2010."

In order to properly pay for these local stormwater management programs and to fund the Department of Conservation and Recreation's necessary program oversight, the Stormwater Management Act, subdivision 5 of § 10.1-603.4 of the Code of Virginia allows for the establishment of a statewide permit fee at a level sufficient to carry out the program. The current fees will be evaluated and necessary increases or decreases made to implement this section of the Code of Virginia. Additionally, the Stormwater Management Act in subdivision 10 of § 10.1-603.4 of the Code of Virginia allows for the establishment of MS4 fees.

Also, requirements set forth in the federal Clean Water Act (33 USC § 1251 et seq.), formally referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, P. L. 92-500, as amended by P. L. 95-217, P. L. 95-576, P. L. 96-483, and P. L. 97-117, or any subsequent revisions thereto, and its attendant regulations set forth in 40 CFR Parts 122, 123, 124 and 125 requires states to establish a permitting program for the management of stormwater for municipal separate storm sewer systems (MS4s) and construction activities disturbing greater than or equal to an acre.

Purpose: The stormwater management program funded through the fees authorized pursuant to this regulatory action is necessary to address water quality within the Commonwealth. Controlling stormwater runoff and its impacts is a serious issue facing the Commonwealth and its local governments. Citizens are complaining about flooding caused by increased amounts of stormwater runoff and the runoff is also reported as a contributor to excessive nutrient enrichment in numerous rivers, lakes, and ponds throughout the state, as well as a continued threat to estuarine waters and the Chesapeake Bay. Numerous studies have documented the cumulative effects of urbanization on stream and watershed ecology. Research has established that as impervious cover in a watershed increases, stream stability is reduced, habitat is lost, water quality becomes degraded, and biological diversity decreases largely due to stormwater runoff. We recognize that impervious areas decrease the natural stormwater purification functions of watersheds and increase the potential for water quality impacts in receiving waters. Additionally, runoff from managed turf is recognized as a significant source of pollutants.

The purpose of this proposed action is to develop regulations that establish statewide stormwater permit fees at a level sufficient to carry out the stormwater management program per subdivision 5 of § 10.1-603.4 of the Code of Virginia and to revise the related provisions in the regulations, as needed, to improve the administration and implementation of fees under the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia).

The fees that are in effect under the current VSMP regulations were transferred over with the stormwater program from the Department of Environmental Quality in 2005 and are essentially only minimal processing fees. These fees are proposed to be amended in this regulatory action, as they are insufficient for the operation of a local program and for necessary program oversight.

- Per the Code of Virginia, the fees need to be set at level sufficient to cover expenses associated with all portions of the administration of the Commonwealth's stormwater management permit program.

- The proposed fees are estimated to appropriately cover the costs of the key elements of administering a stormwater program: plan review, permit review and issuance, inspections, enforcement, program administration and oversight, and travel. The permit fee also includes costs associated with department oversight functions and database management.

- The construction fees are based on the area being disturbed. Administrative expenses routinely increase with the size of the project. When the higher fees are put on a per lot basis, they do not result in a large increase per lot. Such increases will most likely be passed on to the consumer as part of doing business.

- The annual maintenance fees have been established to allow local programs to recoup inspection and enforcement expenses for a project that has not been completed and terminated within the first year. Additionally, modification fees are added to allow a local program to recover expenses associated with significant plan modifications that require review.

- The CPI-U annual increase was added to provide a mechanism to ensure that fees keep pace with the costs of doing business.

- Localities may establish lower construction fees for their program if they can demonstrate their ability to fully and successfully implement a qualifying program at a lower rate or from a different funding source.

- The municipal separate storm sewer system (MS4) fees have been set at a level sufficient to provide oversight to regulated entities MS4 programs and to allow for

implementation plan review, report review, and enforcement.

The fees are necessary, as the sole funding source, to support work to minimize the cumulative impacts of stormwater on humans and the environment and to moderate the associated hydrologic impacts. If not properly managed, stormwater can have significant economic impacts and the stream restoration costs to fix the problems after the fact are very costly. Without the fees generated through this regulatory action, local programs could not be properly administered.

This action is necessary to establish sufficient fees to fund the implementation and oversight of stormwater management programs by both localities and the Department of Conservation and Recreation. Such stormwater management programs are being established through a parallel regulatory action (Parts I, II, and III) and are essential to protect the general health, safety, and welfare of the citizens of the Commonwealth from the potential harm of unmanaged stormwater.

Substance: This proposed regulatory action establishes a statewide fee schedule for stormwater management and state agency projects and establishes the fee assessment and the collection and distribution systems for those fees.

- Construction permit fees are proposed to be established at a level to allow a local program to cover stormwater program costs associated with plan review, permit review and issuance, inspections, enforcement, program administration and oversight, and travel. Fees also include costs associated with department oversight functions and database management.
- 50% of the construction fees are due upon application and the remaining 50% at issuance of coverage.
- The construction fees are split 72% to the local program and 28% to the department.
- Localities may establish lower construction fees for their program if they can demonstrate their ability to fully and successfully implement a qualifying program at a lower rate or from a different funding source.
- The construction fees shall be periodically assessed and revised as necessary through regulatory actions.
- Permit fees are established for:

  Municipal Separate Storm Sewer Systems new coverage (Individual and General Permit)

  Municipal Separate Storm Sewer Systems major modifications (Individual)

  Construction activity coverage (Individual and General Permit) (based on project acreage)

  Construction activity modifications or transfers (Individual and General Permit) (For those permits that require significant additional administrative expenses such as additional plan reviews, etc.)

  MS4 and Construction activity annual permit maintenance fees (Individual and General Permit) (For those projects that have not been completed and terminated within a year, allows for recovery in the out years of expenses associated with inspection, enforcement, etc.)

- Allows for an annual increase in fees based on the CPI-U. (Not to exceed 4.0% per annum without formal action by the board.)

Issues: The primary advantage of this regulatory change for the public is an enhanced statewide stormwater management program that will be properly funded and administered at the local level. This will result in improved compliance with the VSMP regulations and thus improved water quality. The regulated community will also benefit from properly funded and staffed local stormwater management programs, as local administration will improve efficiency and service over today's scenario of erosion and sediment control being administered by the locality and stormwater management being administered by the department. By developing the fee structure based upon the estimated actual costs of administering a local stormwater management program, there is not expected to be any disadvantage to localities or to the department from the fees associated with permits for construction activities.

The primary disadvantage of this proposed regulation is increased permit fees for the regulated community. Today's fees for permits associated with construction activities are set at levels insufficient to support the vast majority of responsibilities associated with administering a stormwater management program. The fees proposed by this regulatory action, while in many cases are higher than the current fees, will allow for proper funding of permit oversight and service. In addition to the increased proposed initial issuance permit fees, annual maintenance fees have been created for the Construction General Permit (by acreage), and for the Construction Individual Permit.

The fees proposed by this regulatory action for municipal separate storm sewer systems (MS4s) are, like the construction activity permitting fees, based on the estimated actual costs of permit administration. For Large and Medium MS4s (Individual Permit), the estimation has resulted in a lower proposed initial issuance permit fee than currently exists. For Small MS4 Individual Permit and for the Small MS4 General Permit, the proposed regulations do include an increased fee. Additionally, MS4 annual maintenance fees have been increased for the MS4 Individual Permit (Large and Medium) and the MS4 Individual Permit (Small) and created for the MS4 General Permit.

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

Summary of the Proposed Amendments to Regulation. The Virginia Stormwater Management Program was created by Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177). This transferred the responsibility for the permitting programs for Municipal Separate Storm Sewers (MS4s) and construction activities from the State Water Control Board and the Department of Environmental Quality to the Virginia Soil and Water Conservation Board and the Department of Conservation and Recreation. This federally-authorized program is administered in accordance with requirements set forth in the federal Clean Water Act (33 USC § 1251 et seq.) as well as the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.).

In a separate action, the Virginia Soil and Water Conservation Board (Board), with the assistance of the Virginia Department of Conservation and Recreation (DCR), proposes a comprehensive revision of Virginia's regulations regarding the control and treatment of stormwater runoff from land development activities. The Board proposes to amend the technical criteria applicable to stormwater discharges from construction activities, establishes minimum criteria for locality-administered stormwater management programs (qualifying local programs) and Department of Conservation and Recreation (Department) administered local stormwater management programs, as well as authorization procedures and review procedures for qualifying local programs, and amends the definitions section applicable to all of the Virginia Stormwater Management Program (VSMP) regulations.

With regard to technical criteria applicable to stormwater discharges from construction activities, revised water quality and water quantity requirements are proposed to be included in Part II of the regulations. Water quality requirements include a 0.28 lbs/acre/year phosphorus standard for new development, a requirement that total phosphorus loads be reduced to an amount at least 20% below the pre-development phosphorus load on prior developed lands, and a requirement that control measures be installed on a site to meet any applicable wasteload allocation. Water quantity requirements include both channel protection and flood protection criteria. This action would also establish the minimum criteria and ordinance requirements (where applicable) for a Virginia Soil and Water Conservation Board (Board) authorized qualifying local program (Part IIIA) or for a Board-authorized Department-administered local stormwater management program (Part IIIB) which include, but are not limited to, administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, enforcement, reporting, and recordkeeping. Part IIID establishes the procedures the Board will utilize in authorizing a locality to administer a qualifying local program. Part IIIC establishes the criteria the Department will utilize in reviewing a locality's administration of a qualifying local program.

Finally, the proposed action would make changes to definitions in Part I, which is applicable to the full body of the VSMP regulations. Unnecessary definitions are proposed to be deleted, needed definitions are proposed to be added, and many existing definitions are proposed to be updated.

This proposed action, which accompanies the aforementioned action, establishes a statewide fee schedule for stormwater management and state agency projects and establishes the fee assessment and the collection and distribution systems for those fees. Permit fees are established for: Municipal Separate Storm Sewer Systems (new coverage); Municipal Separate Storm Sewer Systems (major modifications); Construction activity general permit coverage; Construction activity individual permits, Construction activity modifications or transfers; and MS4 and Construction activity annual permit maintenance fees.

Note: most of the following analysis was directly taken from a report produced by Professor Kurt Stephenson of Virginia Tech and Bobby Beamer of BBeamer LLC. [1]

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

Estimated Economic Impact. The Board proposes modifications to the existing stormwater water quantity and quality requirements that will be applied to every land disturbing activity not exempted by state law (§ 10.1-603.8B).[2] Land disturbing activity subject to this regulation generally includes disturbances of 2,500 square feet or more in the Chesapeake Bay Preservation Act areas and disturbances of an acre or more elsewhere in the state (with some smaller areas included when a part of a larger common plan of development or sale).

The proposed regulations establish statewide water quality design criteria for land disturbing activities. For new land development projects, water quality plans must be designed so that the total phosphorus load shall not exceed 0.28 pounds per acre per year (4VAC50-60-63). The phosphorus load criterion was derived from Chesapeake Bay Tributary Strategies and reductions needed to achieve Bay-wide nutrient reductions derived from the Chesapeake Bay 2000 Agreement. The 0.28/lb/yr phosphorus design criteria represents the average per acre edge of field loading from agriculture, forest and mixed open land uses (estimated from Chesapeake Bay Program watershed model) if the 2005 tributary strategies input deck was fully implemented. For development that occurs on prior developed land, the designs must allow for the total phosphorus loads to be reduced by 20% below predevelopment levels. While the Chesapeake Bay Tributary Strategies called for phosphorus reductions

exceeding 40%, a lower water quality criteria for redevelopment was chosen 1) to achieve additional load reductions from urban areas over existing regulations, and 2) to avoid higher barriers to redevelopment. No explicit sediment or nitrogen water quality design criteria were established because it was determined that the stormwater management practices used to achieve the necessary phosphorus reductions would also result in reductions of nitrogen, sediment, and other potential pollutants.

Compliance is determined by implementing control practices outlined in 4VAC50-60-65. The revisions provide three general ways to reduce phosphorus loads: 1) managing land use conversion (forest, turf, and impervious cover), 2) reducing runoff volumes, and 3) treatment of stormwater runoff. An initial list of best management practices that can be used to achieve the phosphorus criteria are listed in 4VAC50-60-65B. Other BMPs available to comply with the stormwater requirements are listed on the new Virginia Stormwater BMP Clearinghouse website (http://www.vwrrc.vt.edu/swc). The removal efficiency of each BMP includes phosphorus removal from treating the pollutant concentration in the stormwater as well as the percent removal achieved by preventing runoff from occurring (based upon 1 inch of rainfall, 90% storm). The addition of the runoff reduction potential of individual stormwater control practices reflects a substantive change over the existing regulation. Similar to existing practice, the calculation of phosphorus loads is based primarily on the "simple method" (see Virginia Stormwater Handbook) that relates phosphorus load to total impervious surface. The simple method calculation, however, is modified by adding phosphorus loading coefficients for turf and forest land cover. To assist in determining compliance, DCR has also developed an Excel stormwater compliance spreadsheet.

Water quantity control requirements (4VAC50-60-66) establish minimum standards for downstream flood protection and stream channel protection. The proposed regulation establishes different criteria based on the condition of the existing stormwater conveyance systems. Four general classifications of conveyance systems are identified: 1) man-made conveyance systems, 2) restored streams (designed to restore natural steam channels), 3) stable natural stream channels, and 4) unstable natural stream channels. For stream channel protection, general water quantity criteria are (4VAC50-60-66A):

- Man-made conveyance: stormwater releases following land disturbing activity conveys post-development peak flow from 2-year, 24-hour storm without causing erosion.
- Restored stream channel: runoff following land disturbing activity will not exceed design of the restored stormwater conveyance system or result in instability of that system.
- Stable natural stream channel: will not become unstable as a result of the peak flow from the 1-year, 24-hour storm and provides a developed peak flow rate equal to the pre-developed flow rate times the pre-developed runoff volume divided by the developed runoff volume.
- Unstable natural steam channel: runoff following a land-disturbing activity shall be released into a channel at or below a peak developed flow rate based on the 1-year 24-hour storm where the developed peak flow rate is equal to the peak flow rate from the site in a forested condition times the volume of runoff from the site in a forested condition divided by the developed runoff volume.

For flood protection, general water quantity criteria are (4VAC50-60-66B):

- Man-made conveyance must confine the post development peak flow rate from the 10-year, 24-hour storm.
- Restored stream channel: Peak flow rate from the 10-year, 24-hour storm following the land disturbance will be confined within the system.
- Natural stream channel that does not currently flood during a 10-year, 24-hour storm: Post development peak flow from the 10-year, 24-hour storm is confined within the system.
- Natural steam channel where localized flooding exists during a 10-year, 24-hour storm: Post development peak flow rate for 10-year, 24-hour storm shall not exceed predevelopment peak flow from the area under forested conditions.

These criteria do not have to be met under certain conditions where the land disturbance is small relative to the size of the drainage area or results in small contributions to overall peak flow (4VAC50-60-66 C). It is also possible that runoff volume reduction achieved through the implementation of water quality control practices would be sufficient to reduce or avoid the need for water quantity controls.

The proposed regulation allows, in certain situations, water quality and quantity objectives to be met offsite from the disturbed site. 4VAC50-60-65 F and G allow land disturbers to meet water quality criteria off-site. Specifically, the proposed regulations provide that off-site controls "shall achieve the required pollutant reductions either completely off-site in accordance with the plan or in a combination of on-site and off-site controls." In localities with an approved comprehensive watershed management plan (4VAC50-60-96), offset activities can occur within the same Hydrologic Unit Code (HUC)[3] or any locally designated watershed. Without such a plan, offsite controls may be allowed, but must be located within the same HUC or adjacent downstream HUC to the land disturbing site (4VAC50-60-65 G 4). In addition, water quantity objectives could also be met

offsite if a locality has a Board approved watershed stormwater management plan and equivalent off-site reductions are demonstrated. In areas with approved watershed plans, localities are also permitted to develop a pro rata fee program. Such a program allows land disturbers to pay a per unit fee ($ per pound of P) to meet all or a portion of a regulatory requirement. Fee funds must be used, by Virginia Code requirements (§ 15.2-2243), to fund actions to achieve equivalent results offsite. Local programs administered by DCR would not have a fee system and must confine water quality offset activities within, or adjacent to, the impacted HUC. Additionally, the regulations also provide for a request for an exception that may be granted by a local program in accordance with 4VAC50-60-122.

Linear (road) projects are also subject to the water quality and quantity requirements (4VAC50-60-76). Unless exempt from § 10.1-603.8 B, linear development projects shall "control post-development stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan developed in accordance with these regulations."

The proposed regulations also require a stormwater management plan for land disturbing activities. The plan applies the water quality and quantity technical criteria to the land disturbance (4VAC50-60-93).

Program Administration and Permitting: The proposed regulation establishes the requirements for local governments that are required to assume the primary authority to administer the provisions of the proposed regulations as well as for those localities that may elect to administer a program (4VAC50-60-104). DCR's aim is to encourage local governments (counties, cities, and towns) that are not required to administer a program to voluntarily assume this responsibility. Local governments developing a qualifying program must administer the stormwater program in accordance with general criteria outlined in Part III A. In general, a local qualifying program must provide technical criteria to be used in the qualifying local program; procedures for the submission and approval of stormwater management plans (4VAC50-60-108); assessment and collection of fees; inspection and monitoring of land disturbing activities (generally 4VAC50-60-114); procedures and policy for long-term inspection and maintenance of stormwater facilities (4VAC50-60-124); reporting and record keeping (4VAC30-60-126); and enforcement (4VAC30-60-116).

If the local government elects not to administer a program, DCR is required to assume the basic responsibilities of program implementation and administration described above (Part III B).

The regulations also define state oversight responsibilities for the Board and DCR. 4VAC50-60-159 describes the general procedure and requirements the Board must use for authorizing a locality to administer a stormwater management program. Once a locality is approved to administer a stormwater management program, 4VAC50-60-157 describes Board oversight of that program. The Board must review all administered stormwater programs a minimum of once every 5 years (including those administered by DCR). The review will generally consist of reviewing approved site development plans, inspection and enforcement activities, and fee accounting practices. The Board is authorized to pursue corrective actions for noncompliant local programs.

Summary of the estimated economic impact. The proposed revisions to Virginia stormwater regulations will likely produce improvements in the condition of receiving waters. The new emphasis on reducing runoff volumes can produce important benefits related to the condition of aquatic habitat by reducing the energy pulses produced during storm events. New water quantity control requirements also provide benefits in terms of additional flood protection and in-stream aquatic protection. Acknowledging and accounting for the runoff reduction potential of many types of stormwater control practices will increase compliance options and increase the effectiveness of state stormwater regulations.

The proposed regulatory revisions also impose more stringent stormwater water quality criteria. The proposed stormwater regulatory revisions will produce additional reductions in phosphorus and other effluent loads produced from urban land conversion (land use change to impervious cover and turf). Achieving additional improvements in the quality of stormwater will impose new costs on land development activities. In development case examples, the new water quality and quantity standards could be achieved on the development site. The cost of incremental reductions in nutrient loads from the application of stormwater controls, however, is high relative to other nutrient removal options. Uncertainties exist over the long-term cost and effectiveness of many stormwater control practices. The cost of achieving additional nutrient reductions in highly urban settings and other areas with site specific constraints is still uncertain but potentially high. The off-site and pro-rata provisions in the regulation offer opportunities to lower costs and enhance benefits to affected watersheds if properly implemented. The total incremental costs to the state of implementing additional stormwater control practices to meet the proposed regulatory changes could not be estimated at this time.

The proposed revisions apply the same water quality and quantity criteria across the entire state. New proposed stormwater water quality criteria was based on estimates of the nutrient reductions needed to achieve reductions called for in the Chesapeake Bay Tributary Strategies. Economic efficiency of the proposed regulation could be improved by applying differential water quality criteria in watersheds across the state based on the relative water quality benefits that can be achieved.

The proposed regulation will produce improvements in the stormwater permitting structure and will strengthen the administrative tools localities need to implement stormwater programs. While the proposed changes will increase the number and type of control practices that can be used, these changes will also increase the sophistication and resources needed for stormwater design and program administration. The greater expected use of smaller scale distributed practices could increase the costs of local stormwater management, particularly in terms of ensuring the long-term maintenance and performance of stormwater control practices over time. The local and state government cost to administer local stormwater programs will increase (rough estimates range between $13 and $17.5 million, but estimates are not final). State agency cost (DCR) for overall program administration will be a minimum of $3 million per year (estimates are not yet final). These costs are expected to be partially to fully covered by additional fees imposed on land disturbing permit applicants.

This proposed action includes the following fees per permit:

Project Size	Fee per Permit
Greater than or equal to 2,500 sq. ft. & less than 0.5 acres	$290
Greater than or equal to 0.5 acres & less than 1 acre	$1,500
Greater than or equal to 1 acre & less than 5 acres	$2,700
Greater than or equal to 5 acres & less than 10 acres	$3,400
Greater than or equal to 10 acres & less than 50 acres	$4,500
Greater than or equal to 50 acres & less than 100 acres	$6,100
Greater than or equal to 100 acres	$9,600

Based on information supplied by DCR and their own investigation, Stephenson and Beamer project a future average of 5,600 permits per year. Looking at a lower bound estimate of 3,000 permits, best estimated average of 5,600 permits, and an upper bound of 7,000 permits, Stephenson and Beamer estimate that the total annual permit fees collected would be approximately $9 million, $18 million, and $22 million, respectively. DCR would retain about 28 percent of those funds, with the rest going to local governments.

Further detail on estimated costs and benefits can be found in Stephenson and Beamer report, which is Appendix B in the Agency Background Document associated with this proposed action.

Businesses and Entities Affected. The general public and businesses throughout the Commonwealth benefit from additional stream channel and flood protection. Commercial and recreational fisheries benefit from improved water quality. Cleaner waters also benefit tourism-based businesses.

The proposed regulation revises water quality and quantity control requirements for land disturbing activities. As such, the proposed regulations will directly impact private land developers, public land developers, businesses, and homeowners. Virginia residents will also likely pay for the higher costs associated with local stormwater program requirements.[4]

Public agencies (such as state colleges and universities, state agencies, and municipalities) involved in public works and construction projects will also be required to comply with these requirements.

The direct expenditures (costs) associated with implementing the proposed stormwater requirements may increase upon the current demand for stormwater design and construction services. The comprehensive nature of the regulations and the additional technical requirements will necessitate the greater use of environmental consultants and engineers to design stormwater plans and oversee the implementation of stormwater practices. Businesses providing construction and earthmoving services will also be impacted.

Local governments and DCR are clearly affected by the changes in requirements as well.

Localities Particularly Affected. All Virginia localities are significantly affected by the proposed amendments.

Projected Impact on Employment. Since the comprehensive nature of the regulations and the additional technical requirements will necessitate the greater use of environmental consultants and engineers to design stormwater plans and oversee the implementation of stormwater practices, there will likely be more demand for their services and some increase in the value of associated firms.

Effects on the Use and Value of Private Property. Since the comprehensive nature of the regulations and the additional technical requirements will necessitate the greater use of environmental consultants and engineers to design stormwater plans and oversee the implementation of stormwater practices, there will likely be more demand for their services and some increase in the value of associated firms. Cleaner water may also add to the profitability of some commercial fisheries. Also, increased demand for stormwater design and construction services may result in higher value in some associated firms.

Private land developers across the state may face increased land development costs associated with these new regulations in many situations. A portion of those costs will be passed

down to buyers of newly constructed properties, homeowners and businesses. Although maintenance of stormwater control facilities should be conducted under today's regulations, many commercial property owners and some residential property owners across the state may still face higher long-term costs associated with maintenance of stormwater control facilities because of the potential for the installation of a greater number of these facilities to meet the proposed requirements and higher maintenance costs associated with some types of BMPs. Virginia residents will also likely pay for the higher costs associated with local stormwater program requirements.

Small Businesses: Costs and Other Effects. Numerous small businesses, particularly those involved in aquaculture and tourism, will benefit from improved water quality. Those and other firms will benefit from reduced flooding risk. As alluded to above, stormwater design and construction services and environmental consultants and engineers will likely encounter greater demand for their services.

On the other hand, private land developers will face increased land development costs associated with these amended regulations, and a portion of those costs will be passed down to buyers of newly constructed properties including small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. This proposed action concerns the fee schedule associated with the proposed comprehensive revision of Virginia's regulations regarding the control and treatment of stormwater runoff from land development activities. Reducing the burden of the fees on small businesses would necessitate shifting the burden to other entities. If all aspects of the associated proposed comprehensive revision of Virginia's regulations regarding the control and treatment of stormwater runoff from land development activities are kept, then there is no clear alternative method that minimizes the adverse impact on small businesses that would not in turn just be a shifting of a commensurate burden to other entities.

Real Estate Development Costs. The proposed additional fees imposed on land disturbing permit applicants will commensurately increase real estate development costs.

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

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[1] Stephenson, K. and B. Beamer. December 31, 2008, "Economic Impact Analysis of Revisions to the Virginia Stormwater Regulation," Appendix B in the Agency Background Document associated with this proposed action.

[2] Exemptions under this regulation include land-disturbing activities generally associated with agricultural, forest, and mining activities (§ 10.1-603.8 B). Road projects may also be exempted if certain minimal impacts can be demonstrated.

[3] Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset. Sixth order HUC range in size from 10,000 to 40,000 acres. See http://www.dcr.virginia.gov/soil_&_water/hu.shtml

[4] For localities with stormwater utilities, the increase in cost for stormwater control facilities long-term maintenance may be paid for by higher fees. Other localities would have to cover the higher costs through existing local and state revenue sources.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Conservation and Recreation (DCR) has reviewed the economic impact analysis (EIA) of the Virginia Soil and Water Conservation Board's proposed amendments to Part XIII of the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60) prepared by the Department of Planning and Budget (DPB) and generally concurs with the fee assessment while offering the following specific observations and or qualifications.

First, DCR notes that this action is closely tied to the proposed Part I, II, and III stormwater regulatory action as the fees generated are necessary to fund the local stormwater management programs established through that concurrent regulatory action. The fees that are in effect under the current VSMP regulations were transferred over with the stormwater program from the Department of Environmental Quality in 2005 and are essentially only minimal processing fees. The existing fees are proposed to be amended in this regulatory action as they are insufficient for the operation of a local program and for necessary program oversight. The proposed fees have been established using estimates of the time determined to be necessary for different sized projects for a local stormwater management program to conduct plan review, inspections (including stormwater pollution

prevention plan (SWPPP) review and re-inspections), and enforcement; provide technical assistance; and issue permit coverage, and for DCR to provide oversight of the Commonwealth's stormwater management program. The public will benefit from an enhanced statewide stormwater management program that will be properly funded and administered at the local level. This will result in improved compliance with the VSMP regulations and thus improved water quality. The regulated community will also benefit from properly funded and staffed local stormwater management programs, as local administration will improve efficiency and service over today's scenario of erosion and sediment control being administered by the locality and stormwater management being administered by the department. DCR also notes that a wealth of additional information regarding the proposed fees in this regulatory action, including how they are calculated, is presented in the detailed Agency Statement document (TH-02 form) accompanying this regulatory action.

Second, the EIA specifies that "[b]ased on information supplied by DCR and their own investigation, Stephenson and Beamer[1] project a future average of 5,600 permits per year. Looking at a lower bound estimate of 3,000 permits, best estimated average of 5,600 permits, and an upper bound of 7,000 permits, Stephenson and Beamer estimate that the total annual permit fees collected would be approximately $9 million, $18 million, and $22 million, respectively." DCR spent considerable time in its analyses in the Agency Statement refining the estimate of the number of permits that are expected to be issued when the regulations are implemented and the revenue that would need to be generated to cover program costs. DCR, after taking the data from several sources under consideration and the significantly slowing economy, and recognizing that an overestimate of the permits to be expected in the future could lead to severe revenue shortfalls and an inability of both localities and the department to cover program administration costs (if proposed permit fees were further lowered), selected 5,000 permits as a reasonable estimate of the number of expected permits annually going forward (unless there is further erosion of the economy). This calculation is fundamental to both local and state staffing calculations as well as the right-sizing of the proposed fees to cover costs. DCR estimates that the revenue from the proposed fees will be approximately $14.7 million to be used by localities to administer 103 local stormwater management programs and by DCR to administer 74 local stormwater management programs (consolidation of 222 localities) as well as to conduct construction program oversight and MS4 program management. The estimated fee revenue generated compares closely with the $14.9 million estimate in combined program administration costs.

Finally, DCR emphasizes that the proposed fees are necessary, as the sole funding source, to support work to minimize the cumulative impacts of stormwater on humans and the environment and to moderate the associated hydrologic impacts. If not properly managed, stormwater can have significant economic impacts and the stream restoration costs for fixing the problems after the fact are very costly. Without the fees generated through this regulatory action, local programs could not be properly administered. Per the Code, the fees need to be set at level sufficient to cover expenses associated with all portions of the administration of the Commonwealth's stormwater management permit program.

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[1] Stephenson, K. and B. Beamer. December 31, 2008, "Economic Impact Analysis of Revisions to the Virginia Stormwater Regulation," Appendix B in the Agency Background Document associated with this proposed action.

Summary:

This proposed regulatory action establishes a statewide fee schedule for stormwater management and state agency projects and establishes the fee assessment and the collection and distribution systems for those fees. Permit fees are established for: Municipal Separate Storm Sewer Systems (new coverage); Municipal Separate Storm Sewer Systems (major modifications); Construction activity general permit coverage; Construction activity individual permits; Construction activity modifications or transfers; and MS4 and Construction activity annual permit maintenance fees.

This action is closely tied to the proposed Parts I, II, and III action of this chapter as the fees generated are necessary to fund the local stormwater management programs established through that concurrent regulatory action. The fees have been established using estimates of the time determined to be necessary for different sized projects for a local stormwater management program to conduct plan review, for inspections (including stormwater pollution prevention plan (SWPPP) review and re-inspections), for enforcement, to provide technical assistance, to issue permit coverage, and for the Department of Conservation and Recreation to provide oversight of the Commonwealth's stormwater management program.

The necessary proposed permit fee levels were arrived at through discussions of a subcommittee of the technical advisory committee and discussions with the overall technical advisory committee and through corroboration of the costs of conducting the various components of program implementation with Department of Conservation and Recreation stormwater field staff and with local government program personnel.

Part XIII
Fees

4VAC50-60-700. Purpose.

Sections 10.1-603.4 and 10.1-603.5 of the Code of Virginia authorize the establishment of a statewide fee schedule for stormwater management ~~and state agency projects~~ for land-disturbing activities and for municipal separate storm sewer systems. ~~These regulations in this~~ This part ~~establish~~ establishes the fee assessment and the collection ~~system~~ and distribution systems for those fees. The fees associated with individual permits or coverage under the General Permit for Discharges of Stormwater From Construction Activities (permits for stormwater management for land-disturbing activities) issued by a qualifying local program or a department-administered local stormwater management program that has been approved by the board shall include costs associated with plan review, permit review and issuance, inspections, enforcement, program administration and oversight, and database management. Fees shall also be established for permit maintenance, modification, and transfer.

Should a qualifying local program demonstrate to the board its ability to fully and successfully implement a qualifying local program without a full implementation of the fees set out in this part, the board may authorize the administrative establishment of a lower fee for that program provided that such reduction shall not reduce the amount of fees due to the department for its program oversight and shall not affect the fee schedules set forth herein.

As part of its program oversight, the department shall periodically assess the revenue generated by both the localities and the department to ensure that the fees have been appropriately set and the fees may be adjusted through periodic regulatory actions should significant deviations become apparent. The department may make such periodic adjustments in addition to the annual fee increases authorized by 4VAC50-60-840.

4VAC50-60-710. ~~Definitions.~~ (Repealed.)

~~The following words and terms used in this chapter have the following meanings:~~

~~"Permit applicant" means for the purposes of this part any person submitting a permit application for issuance, reissuance, or modification, except as exempted by 4VAC50-60-740, of a permit or filing a registration statement or permit application for coverage under a general permit issued pursuant to the Act and this chapter.~~

~~"Permit application" means for the purposes of this part the forms approved by the Virginia Soil and Water Conservation Board for applying for issuance or reissuance of a permit or for filing a registration statement or application for coverage under a general permit issued in response to the Act and this chapter. In the case of modifications to an existing permit requested by the permit holder and not exempted by 4VAC50-60-740, the application shall consist of the formal written request and any accompanying documentation submitted by the permit holder to initiate the modification.~~

4VAC50-60-720. Authority.

The authority for this part is ~~pursuant to §§ 10.1-604.4~~ §§ 10.1-603.4 and 10.1-603.4:1 of the Code of Virginia and enactment clause 7 governing the transfer of the relevant provisions of Fees for Permits and Certificates Regulations, 9VAC25-20, in accordance with Chapter 372 of the 2004 Virginia Acts of Assembly.

4VAC50-60-730. Applicability.

A. This part applies to:

1. All ~~permit applicants for issuance of~~ persons seeking coverage of a MS4 under a new permit ~~or reissuance of an existing permit, except as specifically exempt under 4VAC50-60-740 A~~. The fee due shall be as specified under 4VAC50-60-800 ~~or 4VAC50-60-820~~.

2. All ~~permittees~~ operators who request that an existing MS4 individual permit be modified, except as specifically exempt under 4VAC50-60-740 ~~A 1 of this chapter~~. The fee due shall be as specified under 4VAC50-60-810.

3. All persons seeking coverage under the General Permit for Discharges of Stormwater From Construction Activities or a person seeking an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.

4. All permittees who request modifications to or transfers of their existing registration statement for coverage under a General Permit for Discharges of Stormwater From Construction Activities or of an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-825 in addition to any additional fees necessary pursuant to 4VAC50-60-820 due to an increase in acreage.

B. ~~An applicant for a permit involving a permit that is to be revoked and reissued~~ Persons who are applicants for an individual VSMP Municipal Separate Stormwater Sewer System permit as a result of existing permit revocation shall be considered an applicant for a new permit. The fee due shall be as specified under 4VAC50-60-800.

Persons whose coverage under the General Permit for Discharges of Stormwater From Construction Activities has been revoked shall reapply for an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.

C. Permit and permit coverage maintenance fees may apply to each Virginia Stormwater Management Permit (VSMP)

permit holder. The fee due shall be as specified under 4VAC50-60-830.

4VAC50-60-740. Exemptions.

A. No permit application fees will be assessed to:

1. Permittees who request minor modifications ~~or minor amendments~~ to permits as defined in 4VAC50-60-10 or other minor amendments at the discretion of the local stormwater management program.

2. Permittees whose permits are modified or amended at the initiative of the permit-issuing authority. This does not include errors in the registration statement identified by the local stormwater management program or errors related to the acreage of the site.

B. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the local stormwater management program shall not be exempt pursuant to this section and shall be subject to fees specified under 4VAC50-60-825.

4VAC50-60-750. Due dates for Virginia Stormwater Management Program (VSMP) Permits.

A. ~~Permit application fees for all new permit applications are due on the day a permit application is submitted and shall be~~ Requests for a permit, permit modification, or general permit coverage shall not be processed until the fees required pursuant to this part are paid in accordance with 4VAC50-60-760. ~~Applications will not be processed without payment of the required fee.~~

~~B. A permit application fee is due on the day a permit application is submitted for a major modification that occurs (and becomes effective) before the stated permit expiration date. There is no application fee for a major modification or amendment that is made at the permit issuing authority's initiative.~~

~~C. Permit~~ B. Individual permit or general permit coverage maintenance fees shall be paid annually to the ~~permit issuing authority by October 1 of each year~~ department or the qualifying local program, as applicable, by the anniversary date of individual permit issuance or general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. Individual permit or general permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

MS4 individual operators who currently pay a permit maintenance fee that is due by October 1 of each year shall continue to pay the maintenance fee by October 1 until their current permit expires. Upon reissuance of the MS4 individual permit, maintenance fees shall be paid on the anniversary date of the reissued permit.

~~Effective April 1, 2005, any permit holder whose permit is effective as of April 1 of a given year (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the permit issuing authority by October 1 of that same year.~~

4VAC50-60-760. Method of payment.

A. Fees, as applicable, shall be, at the discretion of the department, submitted electronically or be paid by check, draft, or postal money order payable to:

~~the~~ 1. The Treasurer of Virginia, for a MS4 individual or general permit or for a coverage issued by the department under the General Permit for Discharges of Stormwater From Construction Activities or Individual Permit for Discharges of Stormwater From Construction Activities, ~~to the permit issuing authority,~~ and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee. ~~To pay electronically, go to the Department of Conservation and Recreation's stormwater management section of the Department's public website at http://www.dcr.virginia.gov.~~ The Department of Conservation and Recreation may provide a means to pay fees electronically. Fees not submitted electronically shall be sent to the following address: ~~Virginia Department of Conservation and Recreation, Division of Finance, Accounts Payable, 203 Governor Street, Richmond, VA 23219.~~

Virginia Department of Conservation and Recreation
Division of Finance, Accounts Payable
203 Governor Street
Richmond, VA 23219

2. The qualifying local program, for coverage authorized by the qualifying local program under the General Permit for Discharges of Stormwater From Construction Activities, and must be in U.S. currency.

B. Required information ~~.~~ for permits or permit coverage: All applicants ~~for new permit issuance, permit reissuance, or permit modification~~, unless otherwise specified by the department, shall submit the following information along with the fee payment or utilize the Department of Conservation and Recreation Permit Application Fee Form:

1. Applicant name, address and daytime phone number.

2. Applicant Federal Identification Number (FIN), if applicable.

3. The name of the facility/activity, and the facility/activity location.

4. The type of permit applied for.

5. Whether the application is for a new permit issuance, permit reissuance, permit maintenance, or permit modification.

6. The amount of fee submitted.

7. The existing permit number, if applicable.

8. Other information as required by the local stormwater management program.

4VAC50-60-770. Incomplete payments and late payments.

All incomplete payments will be deemed as nonpayments. The department or the qualifying local program, as applicable, shall provide notification to the applicant of any incomplete payments.

Interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to § 6621(a)(2) of the Internal Revenue Code. This rate is ~~prescribed~~ set forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

A 10% late payment fee ~~may~~ shall be charged to any delinquent (over 90 days past due) account.

The ~~permit issuing authority is~~ department and the qualifying local program are entitled to all remedies available under the Code of Virginia in collecting any past due amount ~~and may recover any attorney's fees and/or other administrative costs incurred in pursuing and collecting any past due amount~~.

4VAC50-60-780. Deposit and use of fees.

A. All fees collected by the ~~board~~ department or ~~department board in response~~ pursuant to this chapter shall be deposited into ~~a special nonreverting fund known as~~ the Virginia Stormwater Management Fund ~~established by,~~ and shall be used and accounted for as specified in § 10.1-603.4:1 of the Code of Virginia. Fees collected by the department or board shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

B. All fees collected by a qualifying local program pursuant to this chapter shall be subject to accounting review and shall be used solely to carry out the qualifying local program's responsibilities pursuant to Part II and Part III A of this chapter.

~~Whenever~~ Pursuant to subdivision 5 a of § 10.1-603.4 of the Code of Virginia, whenever the board has ~~delegated~~ authorized the administration of a stormwater management program ~~to~~ by a ~~locality or is required to do so by the Act~~ qualifying local program, ~~no more than 30%~~ 28% of the total revenue generated by the statewide stormwater management fees collected within the locality in accordance with 4VAC50-60-820 shall be remitted on a monthly basis to the State Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise collected electronically. If the qualifying local program waives or reduces any fee due in accordance with 4VAC50-60-820, the qualifying local program shall remit the 28% portion that would be due to the Virginia Stormwater Management Fund if such fee were charged in full.

4VAC50-60-790. General.

~~Each permit application for a new permit each permit application for reissuance of a permit, each permit application for major modification of a permit, and each revocation and reissuance of a permit is a~~ The fees for individual permits, general permit coverage, permit or registration statement modification, or permit transfers are considered separate ~~action~~ actions and shall be assessed a separate fee, as applicable. ~~The fees for each type of permit that the permit-issuing authority has the authority to issue, reissue or modify will be as specified in this part.~~

4VAC50-60-800. Fee schedules for VSMP Municipal Separate Storm Sewer System new permit issuance.

The following fee schedule applies to permit applications for issuance of a new individual VSMP Municipal Separate Storm Sewer System permit or coverage under a MS4 General Permit. All regulated MS4s that apply for joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out below.

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	~~$21,300~~ $16,000
VSMP Municipal Stormwater / MS4 Individual (Small)	~~$2,000~~ $8,000
VSMP Municipal Stormwater / MS4 General Permit (Small)	~~$600~~ $4,000

4VAC50-60-810. Fee schedules for major modification of MS4 individual permits ~~or certificates~~ requested by the ~~permitee~~ operator.

The following fee ~~schedules apply~~ schedule applies to applications for major modification of an individual MS4 permit requested by the permittee:

~~The permit application fees listed in the table below apply to a major modification of a VSMP Municipal Separate Storm Sewer Systems Permit that occurs (and becomes effective) before the stated permit expiration date.~~

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	~~$10,650~~ $5,000
VSMP Municipal Stormwater / MS4 Individual (Small)	~~$1,000~~ $2,500

4VAC50-60-820. Fees for ~~filing permit applications (registration statements) for general permits issued by the permit-issuing authority~~ an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities.

The following fees apply to ~~filing of permit applications (registration statements) for all general permits issued by the~~

~~permit issuing authority, except VSMP Stormwater Construction General Permits~~ coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the department prior to a qualifying local program or a department-administered local stormwater management program being approved by the board in the area where the applicable land-disturbing activity is located, or where the department has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state agency for which it has approved annual standards and specifications.

~~The fee for filing a permit application (registration statement) for coverage under a VSMP stormwater general permit issued by the permit issuing authority shall be:~~

VSMP General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than ~~5~~ five acres)	$500
VSMP General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than ~~1~~ one acre and less than ~~5~~ five acres)	$300
VSMP General/Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	$200

The following fees apply to coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state agency that does not file annual standards and specifications, an individual permit issued by the board or coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by a qualifying local program, or a department-administered local stormwater management program that has been approved by the board. For coverage under the General Permit for Discharges of Stormwater from Construction Activities, 50% of the fee shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review in accordance with 4VAC50-60-108. The remaining 50% shall be due prior to the issuance of coverage under the General Permit for Discharges of Stormwater from Construction Activities.

When a site or sites are purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to the following table.

VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)	$290
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre)	$290
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 0.5 acre and less than one acre)	$1,500
VSMP General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	$2,700
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	$3,400
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	$4,500
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	$6,100
VSMP General / Stormwater	$9,600

Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	
VSMP Individual Permit for Discharges of Stormwater From Construction Activities	$15,000

4VAC50-60-825. Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities.

The following fees apply to modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities issued by a qualifying local program or a department-administered local stormwater management program that has been approved by the board. If the permit modifications result in changes to stormwater management plans that require additional review by the local stormwater management program, such reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the total disturbed acreage of the site. No modification or transfer fee shall be required until such board-approved programs exist. No modification fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state agency projects.

VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)	$20
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than one acre)	$20
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 0.5 acre and less than one acre)	$100
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres)	$200
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	$250
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	$300
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	$450
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	$700
VSMP Individual Permit for Discharges of Stormwater From Construction Activities	$5,000

4VAC50-60-830. Permit maintenance fees.

~~A.~~ The following annual permit maintenance fees apply to each VSMP permit identified below, including expired permits that have been administratively continued~~:~~. With respect to the General Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until the permit coverage is terminated, and shall only be effective when assessed by a qualifying local program or a department-administered local stormwater management program that has been approved by the board. No maintenance fee shall be required for a General Permit for Discharges of Stormwater from Construction Activities until such board approved programs exist. No maintenance fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state

agency projects. All regulated MS4s who are issued joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out below:

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	~~$3,800~~ $8,800
VSMP Municipal Stormwater / MS4 Individual (Small)	~~$400~~ $6,000
VSMP Municipal Stormwater / MS4 General Permit (Small)	$4,000
~~VSMP General / Stormwater Management – Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than 5 acres)~~	~~$0~~
~~VSMP General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than 1 acre and less than 5 Acres)~~	~~$0~~
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)	$50
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre)	$50
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 0.5 acre and less than one acre)	$200
VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance equal to or greater than one acre and less than five acres)	$400
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	$500
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	$650
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	$900
VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater 100 acres)	$1,400
VSMP Individual Permit for Discharges From Construction Activities	$3,000

~~B. An additional permit maintenance fee of $1,000 shall be paid annually by permittees in a toxics management program. Any facility that performs acute or chronic biological testing for compliance with a limit or special condition requiring monitoring in a VPDES permit is included in the toxics management program.~~

4VAC50-60-840. ~~[Reserved]~~ Annual increase in fees.

The fees set out in 4VAC50-60-800 through 4VAC50-60-830 shall be increased each July 1 by multiplying the fee by the percentage by which the consumer price index for all-urban consumers published by the United States Department of Labor (CPI-U) for the 12-month period ending May 31 of the preceding year exceeds the CPI-U for the 12-month

period ending May 31, 2007, and the result shall be rounded to the nearest $1 increment. The fee schedule shall be posted to the department's website and distributed to each qualified local program in advance of each fiscal year. Notwithstanding the foregoing, in no event shall the permit fee be decreased and in no event shall any increase exceed 4.0% per annum without formal action by the board.

FORMS (4VAC50-60)

Application Form 1-General Information, Consolidated Permits Program, EPA Form 3510-1, DCR 199-149 (August 1990).

Department of Conservation and Recreation Permit Fee Form, DCR 199-145 ~~(03/09)~~ (9/08).

VSMP General Permit for Discharges of Stormwater from Construction Activities (VAR10) - Registration Statement, DCR 199-146 (03/09).

VSMP General Permit Notice of Termination - Construction Activity Stormwater Discharges (VAR10), DCR 199-147 (03/09).

VSMP General Permit for Discharges of Stormwater from Construction Activities (VAR10) - Transfer Agreement, DCR199-191 (03/09).

VSMP General Permit Registration Statement for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (VAR04), DCR 199-148 (07/08).

VA.R. Doc. No. R06-129; Filed June 2, 2009, 2:35 p.m.

Proposed Regulation

Title of Regulation: **4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-10, 4VAC50-60-20, 4VAC50-60-30, 4VAC50-60-40; adding 4VAC50-60-53, 4VAC50-60-56, 4VAC50-60-63, 4VAC50-60-65, 4VAC50-60-66, 4VAC50-60-72, 4VAC50-60-74, 4VAC50-60-76, 4VAC50-60-85, 4VAC50-60-93, 4VAC50-60-96, 4VAC50-60-102, 4VAC50-60-104, 4VAC50-60-106, 4VAC50-60-108, 4VAC50-60-112, 4VAC50-60-114, 4VAC50-60-116, 4VAC50-60-118, 4VAC50-60-122, 4VAC50-60-124, 4VAC50-60-126, 4VAC50-60-128, 4VAC50-60-132, 4VAC50-60-134, 4VAC50-60-136, 4VAC50-60-138, 4VAC50-60-142, 4VAC50-60-154, 4VAC50-60-156, 4VAC50-60-157, 4VAC50-60-158, 4VAC50-60-159; repealing 4VAC50-60-50, 4VAC50-60-60, 4VAC50-60-70, 4VAC50-60-80, 4VAC50-60-90, 4VAC50-60-100, 4VAC50-60-110, 4VAC50-60-120, 4VAC50-60-130, 4VAC50-60-140, 4VAC50-60-150).**

Statutory Authority: §§ 10.1-603.2:1 and 10.1-603.4 of the Code of Virginia.

Public Hearing Information:

June 30, 2009 - 7 p.m. - Hungry Mother State Park, Hemlock Haven Conference Center, 380 Hemlock Haven Lane, Marion, VA

July 1, 2009 - 7 p.m. - Augusta County Government Center, Board of Supervisors Meeting Room, 18 Government Center Lane, Verona, VA

July 7, 2009 - 7 p.m. - City of Manassas, City Council Chambers, 9027 Center Street, Manassas, VA

July 9, 2009 - 7 p.m. - City of Hampton, City Council Chambers, 22 Lincoln Street, 8th Floor, Hampton, VA

July 14, 2009 - 7 p.m. - Virginia General Assembly Building, 910 Capitol Street, Senate Room B, Richmond, VA

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

Agency Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Basis: The Virginia Stormwater Management Program was created by Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177). This action transferred the responsibility for the permitting programs for Municipal Separate Storm Sewers (MS4s) and construction activities from the State Water Control Board and DEQ to the Virginia Soil and Water Conservation Board and Department of Conservation and Recreation. This federally authorized program is administered in accordance with requirements set forth in the federal Clean Water Act (33 USC § 1251 et seq.) as well as the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia).

Subdivision 2 of § 10.1-603.2:1 of the Code of Virginia authorizes the Virginia Soil and Water Conservation Board to delegate to the department or an approved locality the implementation of the Virginia Stormwater Management Program.

Section 10.1-603.3 of the Code of Virginia (as it will read effective July 1, 2009) requires establishment of stormwater management programs by localities. The board must amend, modify, or delete provisions of the Virginia Stormwater Management Program (VSMP) Permit Regulations to allow localities to implement local stormwater management programs.

Additionally, enactment clause 2 of the Chapter 18 of the 2009 Virginia Acts of Assembly stipulates that the regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria, and that is referenced in subsections A and B of § 10.1-603.3 of this act, shall not become effective prior to July 1, 2010.

Subsection E of § 10.1-603.3 of the Code of Virginia further stipulates minimum requirements for a local stormwater program.

Section 10.1-603.4 of the Code of Virginia also provides additional authority and guidance to the board in the development of regulations, including authority to develop criteria associated with local program administration and implementation, criteria to control nonpoint source pollution, and establishment of statewide standards for stormwater management from land-disturbing activities. It should also be noted that localities may adopt more stringent criteria than the minimum criteria developed by the board through this regulatory process.

HB 2168 of the 2009 Legislative Session (in a July 1, 2009, effective date) establishes a new § 10.1-603.8:1 of the Code of Virginia containing a process for approving stormwater management offsets in the Chesapeake Bay watershed and grants the board the necessary authority to develop a future program in the remainder of the state.

Also, requirements set forth in the federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, P. L. 92-500, as amended by P. L. 95-217, P. L. 95-576, P. L. 96-483, and P. L. 97-117, or any subsequent revisions thereto, and its attendant regulations set forth in 40 CFR Parts 122, 123, 124 and 125 requires states to establish a permitting program for the management of stormwater for municipal separate storm sewer systems (MS4s) and construction activities disturbing greater than or equal to an acre.

Purpose: Controlling stormwater runoff and its impacts is a serious issue facing the Commonwealth and its local governments. Citizens are complaining about flooding caused by increased amounts of stormwater runoff and the runoff is also reported as a contributor to excessive nutrient enrichment in numerous rivers, lakes, and ponds throughout the state, as well as a continued threat to estuarine waters and the Chesapeake Bay. Numerous studies have documented the cumulative effects of urbanization on stream and watershed ecology. Research has established that as impervious cover in a watershed increases, stream stability is reduced, habitat is lost, water quality becomes degraded, and biological diversity decreases largely due to stormwater runoff.

We recognize that impervious areas decrease the natural stormwater purification functions of watersheds and increase the potential for water quality impacts in receiving waters. Additionally, runoff from managed turf is recognized as an additional significant source of pollutants.

Uncontrolled stormwater runoff has many cumulative impacts on humans and the environment including:

- Flooding - Damage to public and private property,
- Eroded Streambanks - Sediment clogs waterways, fills lakes and reservoirs, and kills fish and aquatic animals,
- Widened Stream Channels - Loss of valuable property,
- Aesthetics - Dirty water, trash and debris, foul odors,
- Fish and Aquatic Life - Impaired and destroyed,
- Impaired Recreational Uses - Swimming, fishing, boating,
- Threatens Public Health - Contamination of drinking water, fish/shellfish,
- Threatens Public Safety - Drownings occur in flood waters, and
- Economic Impacts – Impairments to fisheries, shellfish, tourism, and recreation-related businesses.

Additionally, development can dramatically alter the hydrologic regime of a site or watershed as a result of increases in impervious surfaces. The impacts of development on hydrology may include loss of vegetation, resulting in decreased evapotranspiration; soil compaction; reduced groundwater recharge; reduced stream base flow; increased runoff volume; increased peak discharges; decreased runoff travel time; increased frequency and duration of high stream flow; increased flow velocity during storms; and increased frequency of bank-full and over-bank floods.

It is believed that these proposed regulations will work to minimize the cumulative impacts of stormwater on humans and the environment and moderate the associated hydrologic impacts. If not properly managed, stormwater can have significant economic impacts and the stream restoration costs to fix the problems after the fact are very costly.

A 2007 EPA Office of the Inspector General report entitled "Development Growth Outpacing Progress in Watershed Efforts to Restore the Chesapeake Bay"; Report No. 2007-P-00031; September 10, 2007, noted that "new development is increasing nutrient and sediment loads at rates faster than loads are being reduced from developed lands." The Chesapeake Bay Program Office estimated that impervious surfaces in the Bay watershed grew significantly – by 41% – in the 1990s. Meanwhile, the population increased by only 8%. Because progress in reducing loads is being offset by increasing loads from new development, greater reductions will be needed to meet the bay goals as well as to address stream impairments across the Commonwealth. The Chesapeake Bay Program Office estimated that loads from developed and developing lands increased while loads from agriculture and wastewater facilities decreased. Currently, 32% of the phosphorus loads and 28% of the sediment loads to the bay watershed are attributed to urban and suburban sources, making it one of the most significant contributors to the bay's poor health.

The Commonwealth needs to employ all possible strategies in its tool box to address water quality improvements on a statewide basis in both agricultural and urban settings, including making marked improvements in its stormwater regulations. The proposed stormwater regulations are a necessary and critical part of the Commonwealth's overall nutrient reduction strategies and the criteria included in the proposed regulations will slow nutrient and sediment increases, and where possible, contribute to water quality improvements. Improved stormwater management through these regulations will have numerous benefits including reductions in flood risk, avoidance of infrastructure costs through the use of LID practices, improved aquatic life, and enhancement of recreational and commercial fisheries.

This regulatory action is essential to protect the general health, safety, and welfare of the citizens of the Commonwealth from the potential harm of unmanaged stormwater through the establishment of criteria that further protect the quality and manage the quantity of stormwater runoff to state waters, criteria for the administration of a local stormwater management program, processes and procedures for board approval of a qualifying local program, and local program oversight and implementation criteria for the board and the department.

Substance: The key provisions of this regulation:

1. Establish that in order to protect the quality of state waters and to control nonpoint source pollution, a local program shall apply the minimum technical criteria and statewide standards established in Part II for stormwater management associated with land-disturbing activities. In general, since 2005 when the board took over the federal stormwater permit program, the current water quality technical criteria for construction activity statewide are as follows:

- Sites between 0 and 15% imperviousness for new development, all stormwater runoff goes virtually untreated.
- New development above the 16% imperviousness threshold requires a postdevelopment pollutant load of 0.45 lbs/acre/year Phosphorus.
- A 10% reduction in the predevelopment load is required on redevelopment sites.

New statewide water quality technical criteria that are being proposed for construction activity are as follows:

- For new development, a 0.28 lbs/acre/year phosphorus standard is established.
- On prior developed lands, total phosphorus loads shall be reduced to an amount at least 20% below the predevelopment phosphorus load.
- If a wasteload allocation for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, control measures must be implemented to meet the WLA.
- A qualifying local program may establish more stringent standards.
- Compliance with the water quality criteria shall be determined utilizing the Virginia Runoff Reduction Method.
- BMPs listed in Table 1 of Part II or those available on the Virginia Stormwater BMP Clearinghouse shall be utilized to reduce the phosphorus load.
- A locality may establish use limitations on specific BMPs (such as wet ponds or certain infiltration practices).

We believe that most projects can achieve the required reductions on site. However, if the water quality technical criteria cannot be met onsite, offsite controls in part or in whole will be allowed by a qualifying local program in accordance with a department-approved comprehensive watershed stormwater management plan. Offsite reductions shall be equal to or greater than those required on the land-disturbing site.

If no comprehensive watershed stormwater management plan exists, the criteria may still be allowed to be met offsite if:

- The local program allows for offsite controls;
- The applicant demonstrates to the satisfaction of the local program that offsite reductions equal to or greater than those that would otherwise be required for the site are achieved;
- The development's runoff will not result in flooding or channel erosion impacts downstream of the site or any offsite treatment area;
- Offsite controls are located within the same Hydrologic Unit Code or the adjacent downstream Hydrologic Unit Code to the land-disturbing site;
- Verification has been received as to the legal right to use the offsite property; and
- A maintenance agreement for the stormwater facilities is developed.

If allowed by the qualifying local program, reductions required for a site may be achieved by the payment of a pro rata fee sufficient to fund improvements necessary to adequately achieve those reductions.

A local program may also waive the water quality requirements through the granting of an exception in accordance with Part III provided that:

- The exception is the minimum necessary to afford relief.
- Reasonable and appropriate conditions are imposed to preserve the intent of the Act.

• Granting will not confer on the permittee any special privileges denied to others under similar circumstances.

• The exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

• Economic hardship alone is not sufficient reason to grant an exception.

Additionally, HB2168 of the 2009 Session, effective July 1, 2009, created a new section numbered 10.1-603.8:1, relating to stormwater nonpoint nutrient offsets that stipulates that a permit-issuing authority may allow compliance with stormwater nonpoint nutrient runoff water quality criteria through the use of the permittee's acquisition of nonpoint nutrient offsets in the same tributary.

2. Establish in Part II water quantity criteria to address channel protection and flood protection. This language clarifies and expands on current requirements found in Minimum Standard 19 in the Erosion and Sediment Control Regulations (4VAC50-30).

Channel protection shall be achieved through one of the following:

• Stormwater released into a manmade conveyance system from the two-year 24-hour storm shall be done so without causing erosion of the system.

• Stormwater released into a restored stormwater conveyance system, in combination with other existing stormwater runoff, shall not exceed the design of the restored system nor result in instability of the system.

• Stormwater released to a stable natural stormwater conveyance shall not cause the system to become unstable from the one-year 24-hour storm discharge and it shall provide a peak flow rate from the one-year 24-hour storm that is less than or equal to the predevelopment peak flow rate as ascertained by the energy balance equation.

• Stormwater released to an unstable natural stormwater conveyance shall provide a peak flow rate from the one-year 24-hour storm that is less than or equal to the forested peak flow rate as ascertained by the energy balance equation.

Flood protection shall be achieved through one of the following:

• The postdevelopment peak flow rate from the 10-year 24-hour storm is confined within a manmade conveyance system.

• The postdevelopment peak flow rate from the 10-year 24-hour storm is confined within a restored stormwater conveyance system.

• The postdevelopment peak flow rate from the 10-year 24-hour storm is confined within a natural stormwater conveyance that currently does not flood.

• The postdevelopment peak flow rate from the 10-year 24-hour storm shall not exceed the predevelopment peak flow rate from the 10-year 24-hour storm based on forested conditions in a natural stormwater conveyance where localized flooding exists.

• A local program may adopt alternative flood design criteria that achieve equivalent results.

If either of the following conditions are met, the channel protection and flood protection criteria do not apply:

• The site's contributing drainage area is less than or equal to one percent of the total watershed area draining to the point of discharge.

• The development of the site results in an increase in the peak flow rate from the one-year 24-hour storm that is less than one percent of the existing peak flow rate from the one-year 24-hour storm generated by the total watershed area draining to the point of discharge.

3. Establish the minimum criteria and ordinance requirements (where applicable) for a board-authorized qualifying local program (Part III A) or for a board-authorized department-administered local stormwater management program (Part III B), which include but are not limited to administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, enforcement, reporting, and recordkeeping.

A local program shall provide for the following:

a. Identification of the authority or authorities issuing permit coverage, reviewing plans, approving plans, conducting inspections, and carrying-out enforcement.

b. Any technical criteria differing from those set out in the regulations.

c. Plan submission and approval procedures.

d. Project inspection and monitoring processes.

e. Procedures for long-term inspection and maintenance of stormwater management facilities.

f. Enforcement.

g. An ordinance that incorporates the components outlined in items a through f above is required.

h. A local program shall report specified information to the department.

i. A local program may require performance bonds or other financial surety.

A local program shall require stormwater management plans that include the following elements:

• Location of points of discharge, receiving waters, predevelopment and postdevelopment conditions.

- Contact information.
- Project narrative.
- Location and design of stormwater management facilities.
- Hydrologic characteristics and structural properties of the soils utilized during facility installation.
- Hydrologic and hydraulic computations of the predevelopment and postdevelopment runoff conditions for the required design storms.
- Calculations verifying compliance with the water quality and quantity requirements.
- A site map that includes the specified elements.
- Plans shall be appropriately signed and sealed by a professional.

The regulation establishes timelines for establishing plan and application completeness, for plan review and approval, and for plan modifications. It also establishes applicant notification requirements.

Establish that coverage under the construction general permit shall be authorized in accordance with the following:

- The applicant must have an approved stormwater management plan.
- The applicant must have submitted proposed right-of-entry agreements or easements granted from the owner to the local program for the purposes of inspection and maintenance of stormwater management facilities as well as maintenance agreements, including inspection schedules, for such facilities.
- An approved general permit registration statement.
- The required fee form and total fee.

Inspections shall be conducted as follows:

- The local program or its designee shall inspect the land-disturbing activity during construction.
- At the termination of the project and prior to bond or surety release of the performance bond or surety, construction record drawings for the permanent stormwater facilities shall be submitted to the local program.
- The owner of the stormwater management facilities shall conduct inspections in accordance with the inspection schedule in the recorded maintenance agreement and shall submit the inspection report to the local program.
- The local program shall develop a board-approved inspection schedule.

Information shall be reported on a fiscal year basis by the local program to the department by October 1 annually as follows:

- Information regarding permanent stormwater facilities completed during the fiscal year.
- Number of permitted projects inspected by acreage categories.
- Number and type of enforcement actions taken.
- Number of exceptions granted or denied.

4. Establish a Schedule of Civil Penalties as guidance for a court as required by law.

5. Establish in Part III D the procedures the board will utilize in authorizing a locality to administer a qualifying local program. The application package shall include the following:

- The local program ordinance(s);
- A funding and staffing plan based on the projected permitting fees; and
- The policies and procedures, including but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities, for the administration, plan review, permit issuance, inspection and enforcement components of the program.

The department shall operate a program in any locality in which a qualifying local program has not been adopted in accordance with a board-approved schedule.

6. Establish in Part III C the criteria the department will utilize in reviewing a locality's administration of a qualifying local program. The review shall consist of the following:

- An interview between department staff and the qualifying local program administrator or his designee;
- A review of the local ordinance(s) and other applicable documents;
- A review of a subset of the plans approved by the qualifying local program and consistency of application including exceptions granted;
- An accounting of the receipt and of the expenditure of fees received;
- An inspection of regulated activities; and
- A review of enforcement actions and an accounting of amounts recovered through enforcement actions.

7. Make changes to definitions in Part I by deleting unnecessary definitions; establishing abbreviations for commonly used terms; and adding needed definitions.

Issues: The primary advantage of this proposed regulatory action is enhanced water quality and management of stormwater runoff in the Commonwealth. Citizens are complaining about flooding caused by increased amounts of stormwater runoff and the runoff is also a contributor to

excessive nutrient enrichment in numerous rivers, lakes, and ponds throughout the state, as well as a continued threat to estuarine waters and the Chesapeake Bay. The water quality and quantity criteria proposed by this regulatory action will improve upon today's stormwater management program and assist the Commonwealth in reducing nutrient pollution and meeting Chesapeake Bay restoration goals. The regulations will have numerous benefits including reductions in flood risk, avoidance of infrastructure costs through the use of LID practices, improved aquatic life, and enhancement of recreational and commercial fisheries.

The implementation of local stormwater management programs will also have benefits for the regulated community. Today, construction activity operators must go to two sources in order to receive needed Erosion and Sediment Control (locality) and Stormwater (department) approvals. The development of locality-run qualifying local programs will allow for both approvals to be received from a singular source, thus improving efficiency as well as saving time for the developer. Even in localities where the department administers the local stormwater management program, the program envisioned by these proposed regulations will allow for greater customer service and oversight over today's more limited program.

As the board is also proposing a regulatory action related to permit fees (Part XIII) as a compliment to this regulatory action, and as the permit fees proposed by that regulatory action are based on projected costs associated with program administration based on actual data for performing specified management activities, this regulatory action is not projected to have an adverse financial impact upon localities administering qualifying local programs or upon the department in administering local stormwater management programs or in its oversight of qualifying local programs.

The primary disadvantage of this regulatory action will be increased compliance costs in some instances for construction site operators. Those costs are further discussed in the economic impact portion of this document.

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

Summary of the Proposed Amendments to Regulation. The Virginia Stormwater Management Program was created by Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177). This action transferred the responsibility for the permitting programs for Municipal Separate Storm Sewers (MS4s) and construction activities from the State Water Control Board and the Department of Environmental Quality to the Virginia Soil and Water Conservation Board and the Department of Conservation and Recreation. This federally-authorized program is administered in accordance with requirements set forth in the federal Clean Water Act (33 USC § 1251 et seq.) as well as the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.).

The Virginia Soil and Water Conservation Board (Board), with the assistance of the Virginia Department of Conservation and Recreation (DCR), proposes a comprehensive revision of Virginia's regulations regarding the control and treatment of stormwater runoff from land development activities. The Board proposes to amend the technical criteria applicable to stormwater discharges from construction activities, establishes minimum criteria for locality-administered stormwater management programs (qualifying local programs) and Department of Conservation and Recreation (Department) administered local stormwater management programs, as well as authorization procedures and review procedures for qualifying local programs, and amends the definitions section applicable to all of the Virginia Stormwater Management Program (VSMP) regulations.

With regard to technical criteria applicable to stormwater discharges from construction activities, revised water quality and water quantity requirements are proposed to be included in Part II of the regulations. Water quality requirements include a 0.28 lbs/acre/year phosphorus standard for new development, a requirement that total phosphorus loads be reduced to an amount at least 20% below the predevelopment phosphorus load on prior developed lands, and a requirement that control measures be installed on a site to meet any applicable wasteload allocation. Water quantity requirements include both channel protection and flood protection criteria. This action would also establish the minimum criteria and ordinance requirements (where applicable) for a Virginia Soil and Water Conservation Board (Board) authorized qualifying local program (Part IIIA) or for a Board-authorized Department-administered local stormwater management program (Part IIIB) which include, but are not limited to, administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, enforcement, reporting, and recordkeeping. Part IIID establishes the procedures the Board will utilize in authorizing a locality to administer a qualifying local program. Part IIIC establishes the criteria the Department will utilize in reviewing a locality's administration of a qualifying local program.

Finally, this proposed action would make changes to definitions in Part I, which is applicable to the full body of the VSMP regulations. Unnecessary definitions are proposed to be deleted, needed definitions are proposed to be added, and many existing definitions are proposed to be updated.

Note: most of the following analysis was directly taken from a report produced by Professor Kurt Stephenson of Virginia Tech and Bobby Beamer of BBeamer LLC.[1]

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

Estimated Economic Impact. The Board proposes modifications to the existing stormwater water quantity and quality requirements that will be applied to every land disturbing activity not exempted by state law (§ 10.1-603.8 B).[2] Land disturbing activity subject to this regulation generally includes disturbances of 2,500 square feet or more in the Chesapeake Bay Preservation Act areas and disturbances of an acre or more elsewhere in the state (with some smaller areas included when a part of a larger common plan of development or sale).

The proposed regulations establish statewide water quality design criteria for land disturbing activities. For new land development projects, water quality plans must be designed so that the total phosphorus load shall not exceed 0.28 pounds per acre per year (4VAC50-60-63). The phosphorus load criterion was derived from Chesapeake Bay Tributary Strategies and reductions needed to achieve Bay-wide nutrient reductions derived from the Chesapeake Bay 2000 Agreement. The 0.28/lb/yr phosphorus design criteria represents the average per acre edge of field loading from agriculture, forest and mixed open land uses (estimated from Chesapeake Bay Program watershed model) if the 2005 tributary strategies input deck was fully implemented (DCR 2008). For development that occurs on prior developed land, the designs must allow for the total phosphorus loads to be reduced by 20% below predevelopment levels. While the Chesapeake Bay Tributary Strategies called for phosphorus reductions exceeding 40%, a lower water quality criteria for redevelopment was chosen 1) to achieve additional load reductions from urban areas over existing regulations, and 2) to avoid higher barriers to redevelopment. No explicit sediment or nitrogen water quality design criteria were established because it was determined that the stormwater management practices used to achieve the necessary phosphorus reductions would also result in reductions of nitrogen, sediment, and other potential pollutants.

Compliance is determined by implementing control practices outlined in 4VAC50-60-65. The revisions provide three general ways to reduce phosphorus loads: 1) managing land use conversion (forest, turf, and impervious cover), 2) reducing runoff volumes, and 3) treatment of stormwater runoff. An initial list of best management practices that can be used to achieve the phosphorus criteria are listed in 4VAC50-60- 65 B. Other BMPs available to comply with the stormwater requirements are listed on the new Virginia Stormwater BMP Clearinghouse website (http://www.vwrrc.vt.edu/swc). The removal efficiency of each BMP includes phosphorus removal from treating the pollutant concentration in the stormwater as well as the percent removal achieved by preventing runoff from occurring (based upon 1 inch of rainfall, 90% storm). The addition of the runoff reduction potential of individual stormwater control practices reflects a substantive change over the existing regulation. Similar to existing practice, the calculation of phosphorus loads is based primarily on the "simple method" (see Virginia Stormwater Handbook) that relates phosphorus load to total impervious surface. The simple method calculation, however, is modified by adding phosphorus loading coefficients for turf and forest land cover. To assist in determining compliance, DCR has also developed an Excel stormwater compliance spreadsheet.

Water quantity control requirements (4VAC50-60-66) establish minimum standards for downstream flood protection and stream channel protection. The proposed regulation establishes different criteria based on the condition of the existing stormwater conveyance systems. Four general classifications of conveyance systems are identified: 1) man-made conveyance systems, 2) restored streams (designed to restore natural steam channels), 3) stable natural stream channels, and 4) unstable natural stream channels. For stream channel protection, general water quantity criteria are (4VAC50-60-66 B):

- Man-made conveyance: stormwater releases following land disturbing activity conveys postdevelopment peak flow from 2-year, 24-hour storm without causing erosion.
- Restored stream channel: runoff following land disturbing activity will not exceed design of the restored stormwater conveyance system or result in instability of that system.
- Stable natural stream channel: will not become unstable as a result of the peak flow from the 1-year, 24-hour storm and provides a developed peak flow rate equal to the pre-developed flow rate times the pre-developed runoff volume divided by the developed runoff volume.
- Unstable natural steam channel: runoff following a land-disturbing activity shall be released into a channel at or below a peak developed flow rate based on the 1-year 24-hour storm where the developed peak flow rate is equal to the peak flow rate from the site in a forested condition times the volume of runoff from the site in a forested condition divided by the developed runoff volume.

For flood protection, general water quantity criteria are (4VAC50-60-66 C):

- Man-made conveyance must confine the post development peak flow rate from the 10-year, 24-hour storm.
- Restored stream channel: Peak flow rate from the 10-year, 24-hour storm following the land disturbance will be confined within the system.
- Natural stream channel that does not currently flood during a 10-year, 24-hour storm: Post development peak flow from the 10-year, 24-hour storm is confined within the system.

• Natural steam channel where localized flooding exists during a 10-year, 24-hour storm: Post development peak flow rate for 10-year, 24-hour storm shall not exceed predevelopment peak flow from the area under forested conditions.

These criteria do not have to be met under certain conditions where the land disturbance is small relative to the size of the drainage area or results in small contributions to overall peak flow (4VAC50-60-66 D). It is also possible that runoff volume reduction achieved through the implementation of water quality control practices would be sufficient to reduce or avoid the need for water quantity controls.

The proposed regulation allows, in certain situations, water quality and quantity objectives to be met offsite from the disturbed site. Section 4VAC50-60-65F and G allow land disturbers to meet water quality criteria off-site. Specifically, the proposed regulations provide that off-site controls "shall achieve the required pollutant reductions either completely off-site in accordance with the plan or in a combination of on-site and off-site controls." In localities with an approved comprehensive watershed management plan (4VAC50-60-96), offset activities can occur within the same Hydrologic Unit Code (HUC)[3] or any locally designated watershed. Without such a plan, offsite controls may be allowed, but must be located within the same HUC or adjacent downstream HUC to the land disturbing site (4VAC50-60-65 G 4). In addition, water quantity objectives could also be met offsite if a locality has a Board approved watershed stormwater management plan and equivalent off-site reductions are demonstrated. In areas with approved watershed plans, localities are also permitted to develop a pro rata fee program. Such a program allows land disturbers to pay a per unit fee ($ per pound of P) to meet all or a portion of a regulatory requirement. Fee funds must be used, by Virginia Code requirements (§ 15.2-2243), to fund actions to achieve equivalent results offsite. Local programs administered by DCR would not have fee system and must confine water quality offset activities within, or adjacent to, the impacted HUC. Additionally, the regulations also provide for a request for an exception that may be granted by a local program in accordance with 4VAC50-60-122.

Linear (road) projects are also subject to the water quality and quantity requirements (VAC 50-60-76). Unless exempt from § 10.1-603.8 B, linear development projects shall "control postdevelopment stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan developed in accordance with these regulations."

The proposed regulations also require a stormwater management plan for land disturbing activities. The plan applies the water quality and quantity technical criteria to the land disturbance (4VAC50-60-93).

Program Administration and Permitting: The proposed regulation establishes the requirements for local governments that are required to assume the primary authority to administer the provisions of the proposed regulations as well as for those localities that may elect to administer a program (4VAC50-60-104). DCR's aim is to encourage local governments (counties, cities, and towns) that are not required to administer a program to voluntarily assume this responsibility. Local governments developing a qualifying program must administer the stormwater program in accordance with general criteria outlined in Part III A. In general, a local qualifying program must provide:

• technical criteria to be used in the qualifying local program;

• procedures for the submission and approval of stormwater management plans (4VAC50-60-108)

• assessment and collection of fees;

• inspection and monitoring of land disturbing activities (generally 4VAC50-60-114);

• procedures and policy for long-term inspection and maintenance of stormwater facilities (4VAC50-60-124);

• reporting and record keeping (4VAC30-60-126); and

• enforcement (4VAC30-60-116).

If the local government elects not to administer a program, DCR is required to assume the basic responsibilities of program implementation and administration described above (Part III B).

The regulations also define state oversight responsibilities for the Board and DCR. Section 4VAC50-60-159 describes the general procedure and requirements the Board must use for authorizing a locality to administer a stormwater management program. Once a locality is approved to administer a stormwater management program, section 4VAC50-60-157 describes Board oversight of that program. The Board must review all administered stormwater programs a minimum of once every 5 years (including those administered by DCR). The review will generally consist of reviewing approved site development plans, inspection and enforcement activities, and fee accounting practices. The Board is authorized to pursue corrective actions for noncompliant local programs.

Summary of the estimated economic impact

The proposed revisions to Virginia stormwater regulations will likely produce improvements in the condition of receiving waters. The new emphasis on reducing runoff volumes can produce important benefits related to the condition of aquatic habitat by reducing the energy pulses produced during storm events. New water quantity control requirements also provide benefits in terms of additional flood protection and in-stream aquatic protection. Acknowledging and accounting for the runoff reduction

potential of many types of stormwater control practices will increase compliance options and increase the effectiveness of state stormwater regulations.

The proposed regulatory revisions also impose more stringent stormwater water quality criteria. The proposed stormwater regulatory revisions will produce additional reductions in phosphorus and other effluent loads produced from urban land conversion (land use change to impervious cover and turf). Achieving additional improvements in the quality of stormwater will impose new costs on land development activities. In development case examples, the new water quality and quantity standards could be achieved on the development site. The cost of incremental reductions in nutrient loads from the application of stormwater controls, however, is high relative to other nutrient removal options. Uncertainties exist over the long-term cost and effectiveness of many stormwater control practices. The cost of achieving additional nutrient reductions in highly urban settings and other areas with site specific constraints is still uncertain but potentially high. The off-site and pro-rata provisions in the regulation offer opportunities to lower costs and enhance benefits to affected watersheds if properly implemented. The total incremental costs to the state of implementing additional stormwater control practices to meet the proposed regulatory changes could not be estimated at this time.

The proposed revisions apply the same water quality and quantity criteria across the entire state. New proposed stormwater water quality criteria was based on estimates of the nutrient reductions needed to achieve reductions called for in the Chesapeake Bay Tributary Strategies. Economic efficiency of the proposed regulation could be improved by applying differential water quality criteria in watersheds across the state based on the relative water quality benefits that can be achieved.

The proposed regulation will produce improvements in the stormwater permitting structure and will strengthen the administrative tools localities need to implement stormwater programs. While the proposed changes will increase the number and type of control practices that can be used, these changes will also increase the sophistication and resources needed for stormwater design and program administration. The greater expected use of smaller scale distributed practices could increase the costs of local stormwater management, particularly in terms of ensuring the long-term maintenance and performance of stormwater control practices over time. The local and state government cost to administer local stormwater programs will increase (rough estimates range between $13 and $17.5 million, but estimates are not final). State agency cost (DCR) for overall program administration will be a minimum of $3 million per year (estimates are not yet final). These costs are expected to be partially to fully covered by additional fees imposed on land disturbing permit applicants.

Further detail on estimated costs and benefits can be found in the Stephenson and Beamer report, which is Appendix C in the Agency Background Document associated with this proposed action.

Businesses and Entities Affected. The general public and businesses throughout the Commonwealth benefit from additional stream channel and flood protection. Commercial and recreational fisheries benefit from improved water quality. Cleaner waters also benefit tourism–based businesses.

The proposed regulation revises water quality and quantity control requirements for land disturbing activities. As such, the proposed regulations will directly impact private land developers, public land developers, businesses, and homeowners. Virginia residents will also likely pay for the higher costs associated with local stormwater program requirements.[4]

Public agencies (such as state colleges and universities, state agencies, and municipalities) involved in public works and construction projects will also be required to comply with these requirements.

The direct expenditures (costs) associated with implementing the proposed stormwater requirements may increase upon the current demand for stormwater design and construction services. The comprehensive nature of the regulations and the additional technical requirements will necessitate the greater use of environmental consultants and engineers to design stormwater plans and oversee the implementation of stormwater practices. Businesses providing construction and earthmoving services will also be impacted.

Localities Particularly Affected. All Virginia localities are significantly affected by the proposed amendments.

Projected Impact on Employment. Since the comprehensive nature of the regulations and the additional technical requirements will necessitate the greater use of environmental consultants and engineers to design stormwater plans and oversee the implementation of stormwater practices, there will likely be more demand for their services and some increase in the value of associated firms.

Effects on the Use and Value of Private Property. Since the comprehensive nature of the regulations and the additional technical requirements will necessitate the greater use of environmental consultants and engineers to design stormwater plans and oversee the implementation of stormwater practices, there will likely be more demand for their services and some increase in the value of associated firms. Cleaner water may also add to the profitability of some commercial fisheries. Also, increased demand for stormwater design and construction services may result higher value in some associated firms.

Private land developers across the state may face increased land development costs associated with these new regulations in many situations. A portion of those costs will be passed down to buyers of newly constructed properties, homeowners and businesses. Although maintenance of stormwater control facilities should be conducted under today's regulations, many commercial property owners and some residential property owners across the state may still face higher long-term costs associated with maintenance of stormwater control facilities because of the potential for the installation of a greater number of these facilities to meet the proposed requirements and higher maintenance costs associated with some types of BMPs. Virginia residents will also likely pay for the higher costs associated with local stormwater program requirements.

Small Businesses: Costs and Other Effects. Numerous small businesses, particularly those involved in aquaculture and tourism, will benefit from improved water quality. Those and other firms will benefit from reduced flooding risk. As mentioned above, stormwater design and construction services and environmental consultants and engineers will likely encounter greater demand for their services.

On the other hand, private land developers will face increased land development costs associated with these amended regulations, and a portion of those costs will be passed down to buyers of newly constructed properties including small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed revisions apply the same water quality and quantity criteria across the entire state. New proposed stormwater water quality criteria was based on estimates of the nutrient reductions needed to achieve reductions called for in the Chesapeake Bay Tributary Strategies. Economic efficiency of the proposed regulation could be improved by applying differential water quality criteria in watersheds across the state based on the relative water quality benefits that can be achieved. In other words, there are areas of the state where the environmental benefit of a 0.28 lbs/acre/year phosphorus standard for new development is likely significant, and other parts of the Commonwealth where a less stringent standard would not produce a significant adverse impact. The costs for meeting the standard appear to be significant everywhere. Thus, costs could likely be significantly reduced without significantly reducing total benefit by applying differential water quality criteria in watersheds across the state based on the relative water quality benefits that can be achieved.

Real Estate Development Costs. The proposed regulatory revisions impose more stringent stormwater water quality criteria. The proposed stormwater regulatory revisions will produce additional reductions in phosphorus and other effluent loads produced from urban land conversion (land use change to impervious cover and turf). Achieving additional improvements in the quality of stormwater will impose new costs on land development activities.

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

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[1] Stephenson, K. and B. Beamer. December 31, 2008. "Economic Impact Analysis of Revisions to the Virginia Stormwater Regulation."

[2] Exemptions under this regulation include land disturbing activities generally associated with agricultural, forest, and mining activities (§ 10.1-603.8 B). Road projects may also be exempted if certain minimal impacts can be demonstrated.

[3] Hydrologic Unit Code or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset. Sixth order HUC range in size from 10,000 to 40,000 acres. See http://www.dcr.virginia.gov/soil_&_water/hu.shtml

[4] For localities with stormwater utilities, the increase in cost for stormwater control facilities long-term maintenance may be paid for by higher fees. Other localities would have to cover the higher costs through existing local and state revenue sources.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis. The Department of Conservation and Recreation (DCR) has reviewed the economic impact analysis (EIA) of the Virginia Soil and Water Conservation Board's proposed amendments to Parts I, II, and III of the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60) prepared by the Department of Planning and Budget (DPB) and generally concurs with the assessment while offering the following specific observations and or qualifications.

First, DCR agrees with the assertion of DPB that the "proposed revisions to the Virginia stormwater regulation will likely produce improvements in the condition of receiving waters" and that the "revisions will produce additional reductions in phosphorus and other effluent loads produced from urban land conversion (land use change to impervious cover and turf)." DCR notes that these "proposed regulations will work to minimize the cumulative impacts of stormwater on humans and the environment and moderate the associated hydrologic impacts. If not properly managed, stormwater can have significant economic impacts and the stream restoration costs to fix the problems after the fact are very costly." DCR also notes that "[t]he Commonwealth needs to employ all possible strategies in its tool box to address water quality improvements on a statewide basis in both agricultural and urban settings, including making marked improvements in its stormwater regulations. The proposed stormwater regulations are a necessary and critical part of the Commonwealth's overall nutrient reduction strategies and the criteria included in the proposed regulations will slow nutrient and sediment increases, and where possible, contribute to water quality improvements. Improved stormwater management through these regulations will have numerous benefits including reductions in flood risk, avoidance of infrastructure costs through the use of LID practices, improved aquatic life, and enhancement of recreational and commercial fisheries." DCR also notes that a wealth of additional information regarding the potential benefits of this regulatory action are presented in the detailed Agency Statement document (TH-02 form) accompanying this regulatory action.

Second, DCR wants to provide qualifications to DPB's statements regarding the proposed statewide 0.28 pounds per acre per year water quality phosphorus standard. The EIA recognizes that the 0.28 water quality standard that would be imposed by the proposed regulations was calculated based upon the nutrient reductions needed to meet Virginia's Chesapeake Bay goals. The EIA goes on to state that "[e]conomic efficiency of the proposed regulation could be improved by applying differential water quality criteria in watersheds across the state based on the relative water quality benefits that can be achieved." DCR notes that discussions occurred during the development of the proposed regulations surrounding the possibility of setting different water quality standards for the bay and nonbay areas of the Commonwealth, and DCR remains committed to further examining and discussing the appropriate use of this standard as the regulatory process moves forward. In drafting the proposed regulations, however, a statewide standard was believed to have merit for several reasons:

- Stormwater quality is a recognized problem statewide. Impaired waters are not only prevalent in the Chesapeake Bay, but have also been identified throughout the state. Total maximum daily loads have been established on stream segments throughout the state, including nonbay watersheds, to address these impairments. Additionally, studies have reportedly shown that nutrient loadings to Virginia's rivers draining to the Ohio and Mississippi basins may contribute to those basins' hypoxia episodes.

- While the 0.28 lbs/acre/year phosphorus standard was established not only to meet specified bay goals, but also as the target level necessary to minimize nutrient impacts on Virginia's aquatic systems and to maintain the health of aquatic communities.

- Phosphorus is an "indicator pollutant," meaning that targeting its removal will also lead to reductions in nitrogen, sediment, and other potential pollutants that plague the Commonwealth's waters statewide.

- The 0.28 lbs/acre/yr phosphorous load addresses the reductions needed by new development to maintain predevelopment phosphorous loads associated with non-urban land. The end result is "no-net increase" in phosphorous from new development, which helps assure that development will not further impact streams statewide.

- Additionally, stormwater additions to western streams may have even greater impacts due to the greater sensitivity of cold and cool water ecosystems (such as trout streams) to nutrient enrichment, sedimentation, turbidity, and dissolved oxygen reductions. These systems also contain some of Virginia's most ecologically sensitive and rare aquatic communities.

- Establishment of a statewide standard also simplifies and standardizes compliance calculations across jurisdictions, ensuring that no locality has a competitive development advantage and facilitating implementation for both permit applicants and local program administrators.

Third, the EIA observes that "[t]he cost of incremental reductions in nutrient loads from the application of stormwater controls, however, is high relative to other nutrient removal options." It is recognized that, to date, the Commonwealth has focused its efforts on sources that yield reductions at the lowest cost per pound. Efforts employed so far have been successful in helping to address nutrient removal goals for these sources, notably point sources (wastewater treatment and industrial facilities) and agriculture. Achieving the Commonwealth's water quality goals, however, requires that a comprehensive approach of addressing all nutrient pollution sources be utilized. These goals will not be achieved by allowing further degradation in stormwater quality and local receiving waterbodies and attempting to fully mitigate this damage through reductions achieved elsewhere. Moreover, while gains continue to be made in addressing other pollutant sources, contributions from stormwater runoff continue to increase.

Among other sources noted in the Department's Agency Background Document, a 2007 EPA Office of the Inspector General report entitled "Development Growth Outpacing

Progress in Watershed Efforts to Restore the Chesapeake Bay"; Report No. 2007-P-00031; September 10, 2007, noted that "new development is increasing nutrient and sediment loads at rates faster than loads are being reduced from developed lands." The Chesapeake Bay Program Office estimated that impervious surfaces in the bay watershed grew significantly – by 41% – in the 1990s. Meanwhile, the population increased by only 8.0%. Because progress in reducing loads is being offset by increasing loads from new development, greater reductions will be needed to meet the bay goals as well as to address stream impairments across the Commonwealth. The Chesapeake Bay Program Office estimated that loads from developed and developing lands increased while loads from agriculture and wastewater facilities decreased. Currently, 32% of the phosphorus loads and 28% of the sediment loads to the bay watershed are attributed to urban and suburban sources, making it one of the most significant contributors to the bay's poor health. In order for the Commonwealth's waters to be adequately protected, this trend cannot continue, and all sources must be addressed.

Finally DCR reiterates that "[t]hese proposed regulations are thus a necessary part of the overall reduction strategies. We believe that a substantial amount of work done to date shows that proper site planning and designing for stormwater controls early in the development process will ease many difficulties involved with requiring appropriate stormwater controls. These improved stormwater regulations are necessary to protect the public interest. For example, stormwater itself is increasingly being recognized as a resource that should be retained on site and used for irrigation, groundwater recharge, and other beneficial uses. On the other hand, damages to aquatic resources, stream channels, and downstream properties from poorly managed stormwater are significant and are difficult to correct if development has taken place without the necessary design controls."

Summary:

The amendments provide technical criteria applicable to stormwater discharges from construction activities; establish minimum criteria for locality-administered stormwater management programs (qualifying local programs) and Department of Conservation and Recreation administered local stormwater management programs, as well as authorization procedures and review procedures for qualifying local programs; and revise the definitions section applicable to all of the Virginia Stormwater Management Program (VSMP) regulations.

With regard to technical criteria applicable to stormwater discharges from construction activities, revised water quality and water quantity requirements are proposed to be included in Part II of the regulations. Water quality requirements include a 0.28 lbs/acre/year phosphorus standard for new development, a requirement that total phosphorus loads be reduced to an amount at least 20% below the predevelopment phosphorus load on prior developed lands, and a requirement that control measures be installed on a site to meet any applicable wasteload allocation are added. Water quantity requirements include both channel protection and flood protection criteria.

This action would also establish the minimum criteria and ordinance requirements (where applicable) for a Virginia Soil and Water Conservation Board authorized qualifying local program (Part III A) or for a board-authorized department-administered local stormwater management program (Part III B) which include, but are not limited to, administration, plan review, issuance of coverage under the General Virginia Stormwater Management Program Permit for Discharges of Stormwater from Construction Activities, inspection, enforcement, reporting, and recordkeeping. Part III D establishes the procedures the board will utilize in authorizing a locality to administer a qualifying local program. Part III C establishes the criteria the department will utilize in reviewing a locality's administration of a qualifying local program.

Finally, this proposed action would make changes to definitions in Part I, which is applicable to the full body of the VSMP regulations. Unnecessary definitions are proposed to be deleted, needed definitions are proposed to be added, and many existing definitions are proposed to be updated.

Part I
Definitions, Purpose, and Applicability

4VAC50-60-10. Definitions.

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

"Act" means the Virginia Stormwater Management Act, Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Adequate channel" means a ~~channel~~ watercourse or wetland that will convey the designated frequency storm event without overtopping ~~the channel bank nor~~ its banks or causing erosive damage to the ~~channel~~ bed ~~or~~, banks, or overbank sections of the same.

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or

prohibitions, best management practices, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Virginia Soil and Water Conservation Board or their designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123 (2000).

~~"Aquatic bench" means a 10- to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.~~

~~"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16%. Note that a locality may opt to calculate actual watershed specific values for the average land cover condition based upon 4VAC50-60-110.~~

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practice ~~(BMP)~~" or "BMP" means schedules of activities, prohibitions of practices, including both a structural or nonstructural practice, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

~~"Bioretention basin" means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed, and into the in-situ material.~~

~~"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.~~

"Board" means the Virginia Soil and Water Conservation Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Channel" means a natural stream or manmade ~~waterway~~ watercourse with defined bed and banks that conducts continuously or periodically flowing water.

~~"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.~~

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land use plans or regulations, that specifies how the water quality and quantity components of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

"Construction activity" means any clearing, grading or excavation associated with large construction activity or associated with small construction activity.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

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

"Co-operator" means an operator ~~to~~ of a VSMP permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"CWA" means the federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily

discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Department of Conservation and Recreation.

"Development" means ~~a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units~~ land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an equivalent form developed by the operator and approved by the board, for the reporting of self-monitoring results by operators.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Drainage area" means a land and water area on a land-disturbing site from which runoff flows to a common outlet point.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency ~~(EPA)~~" or "EPA" means the United States Environmental Protection Agency.

"Existing permit" means for the purposes of this chapter a permit issued by the permit-issuing authority and currently held by a permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VSMP point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VSMP ~~program~~.

"Flood fringe" is the portion of the floodplain outside the floodway, usually associated with standing rather than flowing water, which is covered by floodwater during the 100-year discharge.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Floodplain" means any land area adjoining a channel, river, stream, or other water body that is susceptible to being inundated by water. It includes the floodway and flood fringe areas.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot or as otherwise designated by the Federal Emergency Management Agency.

"General permit" means a VSMP permit authorizing a category of discharges under the CWA and the Act within a geographical area.

~~"Grassed swale" means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from~~

~~stormwater runoff by filtration through grass and infiltration into the soil.~~

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (2000) pursuant to § 311 of the CWA.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit (other than the VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 4VAC50-60-1220 C 2.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, conventional roofs, buildings, streets, parking areas, and any conventional concrete, asphalt, or ~~compacted~~ gravel surface that is or may become compacted.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works (POTW)."

~~"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.~~

"Inspection" means an on-site review of the project's compliance with the permit, the local stormwater management program, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the ~~federal Clean Water Act~~ CWA, the Act, and this chapter.

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));

2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving surface waters; and

e. Other relevant factors.

4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and (iii) highway construction projects.

"Local stormwater management program" or "local program" means ~~a statement of~~ the various methods employed by a locality or the department to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, plan review, inspection, enforcement, and evaluation consistent with the Act and this chapter. ~~The ordinance shall include provisions to require the control of after-development stormwater runoff rate of flow, the proper maintenance of stormwater management facilities, and minimum administrative procedures.~~

"Locality" means a county, city, or town.

"Major facility" means any VSMP facility or activity classified as such by the regional administrator in conjunction with the board.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall ~~(or major outfall)~~" or "major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man.

"Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other conveyance constructed by man.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));

2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving surface waters; or

e. Other relevant factors.

4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate

storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing permit before its expiration as specified in 4VAC50-60-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the ~~Virginia Stormwater Management~~ Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

"National Pollutant Discharge Elimination System ~~(NPDES)~~" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its floodplain.

"Natural stormwater conveyance system" means the main channel of a natural stream, in combination with the floodway and flood fringe, which compose the floodplain.

"Natural stream" means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which is not a new source; and

4. Which has never received a finally effective VPDES or VSMP permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a permit issued by the permit-issuing authority to a permit applicant that does not currently hold and has never held a permit of that type, for that activity, at that location.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA that are applicable to such source; or

2. After proposal of standards of performance in accordance with § 306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"Nonpoint source pollution" means pollution such as sediment, nitrogen and phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

~~"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.~~

"Operator" means the owner or operator of any facility or activity subject to regulation under the VSMP program. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia, the Act and this chapter.

"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a particular location.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" means an approval issued by the permit-issuing authority for the initiation of a land-disturbing activity or for stormwater discharges from an MS4. Permit does not include any permit that has not yet been the subject of final permit-issuing authority action, such as a draft permit or a proposed permit.

"Permit-issuing authority" means the board, the department, or a locality ~~that is delegated authority by the board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of the Act and this chapter~~ with a qualifying local program.

"Permittee" means the person or locality to which the permit is issued, including any operator whose construction site is covered under a construction general permit.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body (including but not limited to a federal, state, or local entity), any interstate body or any other legal entity.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Point of discharge" means a location at which stormwater runoff is released.

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does

not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Pollutant discharge" means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered in a diffuse manner by stormwater runoff.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

~~"Post-development"~~ "Postdevelopment" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

~~"Pre-development"~~ "Predevelopment" refers to the conditions that exist at the time that plans for the land development of a tract of land are ~~approved by~~ submitted to the plan approval authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being ~~approved or permitted~~ submitted shall establish ~~pre-development~~ predevelopment conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

"Privately owned treatment works ~~(PVOTW)~~" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Proposed permit" means a VSMP permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) that is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works ~~(POTW)~~" or "POTW" means a treatment works as defined by § 212 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Qualifying local stormwater management program" or "qualifying local program" means a local program that is administered by a locality that has been authorized by the board to issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1170).

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

~~"Regional (watershed-wide) stormwater management facility" or "regional facility" means a facility or series of facilities designed to control stormwater runoff from a specific watershed, although only portions of the watershed may experience land development.~~

~~"Regional (watershed-wide) stormwater management plan" or "regional plan" means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.~~

"Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts, including the main channel, floodway, and flood fringe.

"Revoked permit" means, for the purposes of this chapter, an existing permit that is terminated by the board before its expiration.

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

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

~~"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.~~

"Runoff characteristics" include, but are not limited to, velocity, peak flow rate, volume, time of concentration, and flow duration, and their influence on channel morphology including sinuosity, channel cross-sectional area, and channel slope.

"Runoff volume" means the volume of water that runs off the site of a land-disturbing activity from a prescribed design storm.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

~~"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area, to maintain the desired water surface elevations to support emergent vegetation.~~

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"Site" means the land or water area where any facility or activity is physically located or conducted, a parcel of land being developed, or a designated ~~planning~~ area of a parcel in which the land development project is located. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"Site hydrology" means the movement of water on, across, through and off the site as determined by parameters including, but not limited to, soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the

construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Stable" means, in the context of channels, a channel that has developed an established dimension, pattern, and profile such that over time, these features are maintained.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state that coordinates EPA and state activities, responsibilities and programs including those under the CWA and the Act.

"State project" means any land development project that is undertaken by any state agency, board, commission, authority or any branch of state government, including state-supported institutions of higher learning.

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

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

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater conveyance system" means any of the following, either within or downstream of the land-disturbing activity: (i) a manmade stormwater conveyance system, (ii) a natural stormwater conveyance system, or (iii) a restored stormwater conveyance system.

~~"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.~~

"Stormwater discharge associated with construction activity" means a discharge of pollutants in stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

~~"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.~~

~~"Stormwater extended detention basin enhanced" or "extended detention basin enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.~~

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a ~~document~~ document(s) containing material for describing how existing runoff characteristics will be maintained by a land-disturbing activity and methods for complying with the requirements of the local program or this chapter.

"Stormwater Management Program" means a program established by a locality that is consistent with the requirements of the ~~Virginia Stormwater Management~~ Act, this chapter and associated guidance documents.

"Stormwater management standards" means the minimum criteria for stormwater management programs and land-disturbing activities as set out in Part II (4VAC50-60-40 et seq.) of this chapter.

"Stormwater Pollution Prevention Plan" (SWPPP) or "plan" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the construction site or its associated land-disturbing activities. In addition the document shall describe and ensure the implementation of best management practices, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an erosion and sediment control plan, a post-construction stormwater management plan, a spill prevention control and countermeasure (SPCC) plan, and other practices that will be used to reduce pollutants in stormwater discharges from land-disturbing activities and to assure compliance with the terms and conditions of this chapter. All plans incorporated by reference into the SWPPP shall be enforceable under the permit issued.

~~"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding, or stream channel erosion.~~

~~"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.~~

~~"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.~~

~~"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.~~

"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. That are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. That are used or could be used for industrial purposes by industries in interstate commerce.

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Unstable" means, in the context of channels, a channel that is not stable.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125 (2000), or in the applicable effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.

~~"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration and absorption, and is dedicated for that purpose.~~

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

"Virginia Stormwater Management Act" or "Act" means Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

"Virginia Stormwater Management Program ~~(VSMP)~~" or "VSMP" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the ~~federal Clean Water Act~~ CWA, the ~~Virginia Stormwater Management~~ Act, this chapter, and associated guidance documents.

"Virginia Stormwater Management Program ~~(VSMP)~~ permit" or "VSMP permit" means a document issued by the permit-issuing authority pursuant to the Virginia Stormwater Management Act and this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters. Under the approved state program, a VSMP permit is equivalent to a NPDES permit.

"VSMP application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VSMP permit.

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the ~~Virginia Stormwater Management~~ Act (§ 10.1-603.1 et seq. of the Code of Virginia), and the ~~federal Clean Water Act~~ CWA (33 USC § 1251 et seq.).

~~"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the impervious surface of the land development project.~~

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

4VAC50-60-20. Purposes.

The purposes of this chapter are to provide a framework for the administration, implementation and enforcement of the Virginia Stormwater Management Act (Act) and to delineate the procedures and requirements to be followed in connection with VSMP permits issued by the board or its designee pursuant to the Clean Water Act (CWA) and the Virginia Stormwater Management Act, while at the same time providing flexibility for innovative solutions to stormwater management issues. The chapter also establishes the board's

procedures for the authorization of a qualifying local program, board and department oversight authorities for an authorized qualifying local program, the board's procedures for utilization by the department in administering a local program in localities where no qualifying local program is authorized, and the components of a stormwater management program including but not limited to stormwater management standards.

4VAC50-60-30. Applicability.

This chapter is applicable to:

1. Every private, local, state, or federal entity that establishes a stormwater management program or a MS4 program;

2. The department in its oversight of locally administered programs or in its administration of a local program;

~~2.~~ 3. Every state agency project regulated under the Act and this chapter; and

~~3.~~ 4. Every land-disturbing activity regulated under § 10.1-603.8 of the Code of Virginia unless otherwise exempted in § 10.1-603.8 B.

Part II
Stormwater Management Program Technical Criteria

4VAC50-60-40. ~~Applicability~~ Authority and applicability.

~~This part specifies technical criteria for every stormwater management program and land-disturbing activity.~~

Pursuant to the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia), the board is required to take actions ensuring the general health, safety, and welfare of the citizens of the Commonwealth as well as protecting the quality and quantity of state waters from the potential harm of unmanaged stormwater. In addition to other authority granted to the board under the Stormwater Management Act, the board is authorized pursuant to §§ 10.1-603.2:1 and 10.1-603.4 to adopt regulations that specify minimum technical criteria for stormwater management programs in Virginia, to establish statewide standards for stormwater management from land-disturbing activities, and to protect properties, the quality and quantity of state waters, the physical integrity of stream channels, and other natural resources.

In accordance with the board's authority, this part establishes the minimum technical criteria and stormwater management standards that shall be employed by a state agency in accordance with an implementation schedule set by the board, or by a qualifying local program or department-administered local stormwater management program that has been approved by the board, to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities.

For those localities required to adopt a local stormwater management program pursuant to § 10.1-603.3 of the Code of Virginia, until a local program is approved by the board, the technical criteria required shall be that found at 4VAC50-60-1180 through 4VAC50-60-1190.

4VAC50-60-50. ~~General.~~ (Repealed.)

~~A. Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed which also contributes to that point of discharge.~~

~~B. The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.~~

~~C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.~~

~~D. Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits shall be presented.~~

~~E. Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.~~

~~F. Pre-development and post-development runoff rates shall be verified by calculations that are consistent with good engineering practices.~~

~~G. Outflows from a stormwater management facility or stormwater conveyance system, shall be discharged to an adequate channel.~~

~~H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.~~

~~I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and~~

~~the responsible party for carrying out the inspection and maintenance plan.~~

~~J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided to the extent possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.~~

~~K. Natural channel characteristics shall be preserved to the maximum extent practicable.~~

~~L. Land disturbing activities shall comply with the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and attendant regulations.~~

~~M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas defined in the Chesapeake Bay Preservation Act, provided that (i) the local government has conclusively established that the location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; and, (iii) the facility must be consistent with a stormwater management program that has been approved by the board.~~

4VAC50-60-53. General requirements.

The physical, chemical, biological, and hydrologic characteristics and the water quality and quantity of the receiving state waters shall be maintained, protected, or improved in accordance with the requirements of this part. Objectives include, but are not limited to, supporting state designated uses and water quality standards. All control measures used shall be employed in a manner that minimizes impacts on receiving state waters.

4VAC50-60-56. Applicability of other laws and regulations.

Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations, including, but not limited to, the CWA, Virginia Stormwater Management Act, Virginia Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act, except as provided in § 10.1-603.3 I of the Code of Virginia and all applicable regulations adopted in accordance with those laws, or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

4VAC50-60-60. ~~Water quality.~~ (Repealed.)

~~A. Compliance with the water quality criteria may be achieved by applying the performance-based criteria or the technology based criteria to either the site or a planning area.~~

~~B. Performance based criteria. For land disturbing activities, the calculated post-development nonpoint source pollutant runoff load shall be compared to the calculated pre-development load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in Table 1 to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:~~

~~1. Situation 1 consists of land disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover which is less than the average land cover condition.~~

~~Requirement: No reduction in the after disturbance pollutant discharge is required.~~

~~2. Situation 2 consists of land disturbing activities where the existing percent impervious cover is less than or equal to the average land cover condition and the proposed improvements will create a total percent impervious cover which is greater than the average land cover condition.~~

~~Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the average land cover condition.~~

~~3. Situation 3 consists of land disturbing activities where the existing percent impervious cover is greater than the average land cover condition.~~

~~Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant discharge based on existing conditions less 10% or (ii) the pollutant discharge based on the average land cover condition, whichever is greater.~~

~~4. Situation 4 consists of land disturbing activities where the existing percent impervious cover is served by an existing stormwater management BMP that addresses water quality.~~

~~Requirement: The pollutant discharge after disturbance shall not exceed the existing pollutant discharge based on the existing percent impervious cover while served by the existing BMP. The existing BMP shall be shown to have been designed and constructed in accordance with proper design standards and specifications, and to be in proper functioning condition.~~

~~C. Technology based criteria. For land disturbing activities, the post-developed stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the post developed condition percent impervious cover as specified in Table 1. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in Table 1. Design standards and~~

~~specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency will be available at the department.~~

~~Table 1*~~

~~Water Quality BMP*~~	~~Target Phosphorus Removal Efficiency~~	~~Percent Impervious Cover~~
~~Vegetated filter strip~~ ~~Grassed Swale~~	~~10%~~ ~~15%~~	~~16-21%~~
~~Constructed wetlands~~ ~~Extended detention (2 x WQ Vol)~~ ~~Retention basin I (3 x WQ Vol)~~	~~20%~~ ~~35%~~ ~~40%~~	~~22-37%~~
~~Bioretention basin~~ ~~Bioretention filter~~ ~~Extended detention enhanced~~ ~~Retention basin II (4 x WQ Vol)~~ ~~Infiltration (1 x WQ Vol)~~	~~50%~~ ~~50%~~ ~~50%~~ ~~50%~~ ~~50%~~	~~38-66%~~
~~Sand filter~~ ~~Infiltration (2 x WQ Vol)~~ ~~Retention basin III (4 x WQ Vol with aquatic bench)~~	~~65%~~ ~~65%~~ ~~65%~~	~~67-100%~~

~~*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table which target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department.~~

4VAC50-60-63. Water quality criteria requirements.

In order to protect the quality of state waters and to control nonpoint source pollution, the following minimum technical criteria and statewide standards for stormwater management shall be applied to the site of a land-disturbing activity. The local program shall have discretion to allow for application of the criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 4VAC50-60-96.

1. New development. The total phosphorus load of new development projects shall not exceed 0.28 pounds per acre per year, as calculated pursuant to 4VAC50-60-65.

2. Development on prior developed lands. The total phosphorus load of projects occurring on prior developed lands shall be reduced to an amount at least 20% below the predevelopment total phosphorus load. However, the total phosphorus load shall not be required to be reduced to below 0.28 pounds per acre per year unless a more stringent standard has been established by a qualifying local program.

3. Compliance with 4VAC50-60-65 shall constitute compliance with subdivisions 1 and 2 of this section.

4. TMDL. In addition to the above requirements, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, necessary control measures must be implemented by the operator to meet the WLA in accordance with the requirements established in the General Permit for Discharges of Stormwater from Construction Activities or an individual permit, which address both construction and postconstruction discharges.

4VAC50-60-65. Water quality compliance.

A. Compliance with the water quality criteria set out in subdivisions 1 and 2 of 4VAC50-60-63 shall be determined by utilizing the Virginia Runoff Reduction Method or another methodology that is demonstrated by the qualifying local program to achieve equivalent or more stringent results and is approved by the board.

B. The BMPs listed in Table 1 or the BMPs available on the Virginia Stormwater BMP Clearinghouse website shall be utilized as necessary to effectively reduce the phosphorus load in accordance with the Virginia Runoff Reduction Method. Design specifications for the BMPs listed in Table 1 can be found at http://www.vwrrc.vt.edu/swc.

TABLE 1
BMP Pollutant Removal Efficiencies

Practice	Removal of Total Phosphorus by Runoff Volume Reduction (RR, as %) (based upon 1 inch of rainfall --90% storm)	Removal of Total Phosphorus by Treatment -- Pollutant Concentration Reduction (PR, as %)	Total Removal of Total Phosphorus (TR, as %)
Green Roof 1	45	0	45
Green Roof 2	60	0	60
Rooftop Disconnection 1	25	0	25
Rooftop Disconnection 2	50	0	50

Rain Tanks/ Cisterns 1	actual volume x .75	0	actual volume x .75
Soil Amendments 1	50	0	50
Soil Amendments 2	75	0	75
Permeable Pavement 1	45	25	59
Permeable Pavement 2	75	25	81
Grass Channel 1	10	15	23
Grass Channel 2	20	15	32
Bioretention 1	40	25	55
Bioretention 2	80	50	90
Infiltration 1	50	25	63
Infiltration 2	90	25	93
Dry Swale 1	40	20	52
Dry Swale 2	60	40	76
Wet Swale 1	0	20	20
Wet Swale 2	0	40	40
Sheet Flow to Conserved Open Space 1	0	50	50
Sheet Flow to Conserved Open Space 2	0	75	75
Extended Detention Pond 1	0	15	15
Extended Detention Pond 2	15	15	28
Filtering Practice 1	0	60	60
Filtering Practice 2	0	65	65
Constructed Wetland 1	0	50	50
Constructed Wetland 2	0	75	75
Wet Pond 1	0	50	50
Wet Pond 2	0	75	75

C. BMPs differing from those listed in Table 1 shall be reviewed and approved by the director in accordance with procedures established by the BMP Clearinghouse Committee and approved by the board.

D. A qualifying local program may establish use limitations on specific BMPs following the submission of the proposed use limitation and written justification to the department.

E. Where the land-disturbing activity only occurs on a portion of the site, the local program may review the stormwater management plan based upon the portion of the site that is proposed to be developed, provided that the local program has established guidance for such a review. Such portion shall be deemed to include any area left undeveloped pursuant to any local requirement or proffer accepted by a locality. Any such guidance shall be provided to the department.

F. If a comprehensive watershed stormwater management plan has been adopted pursuant to 4VAC50-60-96 for the watershed within which a project is located, then the qualifying local program may allow offsite controls in accordance with the plan to achieve the postdevelopment pollutant load water quality technical criteria set out in subdivisions 1 and 2 of 4VAC50-60-63. Such offsite controls shall achieve the required pollutant reductions either completely offsite in accordance with the plan or in a combination of onsite and offsite controls.

G. Where no plan exists pursuant to subsection F of this section, offsite controls may be used to meet the postdevelopment pollutant load water quality technical criteria set out in subdivisions 1 and 2 of 4VAC50-60-63 provided:

1. The local program allows for offsite controls;

2. The applicant demonstrates to the satisfaction of the local program that offsite reductions equal to or greater than those that would otherwise be required for the site are achieved;

3. The applicant demonstrates to the satisfaction of the local program that the development's runoff and the runoff from any offsite treatment area shall be controlled in accordance with 4VAC50-60-66;

4. Offsite controls must be located within the same HUC or the adjacent downstream HUC to the land-disturbing site; and

5. The applicant demonstrates to the satisfaction of the local program that the right to utilize the offsite control area and any necessary easements has been obtained and maintenance agreements for the stormwater management facilities have been established pursuant to 4VAC50-60-124.

H. Alternatively, the local program may waive the requirements of subdivisions 1 and 2 of 4VAC50-60-63 through the granting of an exception pursuant to 4VAC50-60-122.

4VAC50-60-66. Water quantity.

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of subdivision 7 of § 10.1-603.4 of the Code of Virginia.

B. Channel protection. Concentrated stormwater flow from the site and offsite contributing areas shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of accepted hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to manmade stormwater conveyance systems. The point of discharge releases stormwater into a manmade stormwater conveyance system that, following the land-disturbing activity, conveys the postdevelopment peak flow rate from the two-year 24-hour storm without causing erosion of the system.

2. Concentrated stormwater flow to restored stormwater conveyance systems. The point of discharge releases stormwater into a stormwater conveyance system that (i) has been restored and is functioning as designed or (ii) will be restored. The applicant must demonstrate that the runoff following the land-disturbing activity, in combination with other existing stormwater runoff, will not exceed the design of the restored stormwater conveyance system nor result in instability of the system.

3. Concentrated stormwater flow to stable natural stormwater conveyance systems. The point of discharge releases stormwater into a natural stormwater conveyance system that is stable and, following the land-disturbing activity, (i) will not become unstable as a result of the discharge from the one-year 24-hour storm, and (ii) provides a peak flow rate from the one-year 24-hour storm calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent results and is approved by the board:

$Q_{Developed} * RV_{Developed} \leq Q_{Pre\text{-}Developed} * RV_{Pre\text{-}Developed}$, where

$Q_{Developed}$ = The allowable peak flow rate of runoff from the developed site.

$Q_{Pre\text{-}Developed}$ = The peak flow rate of runoff from the site in the predeveloped condition.

$RV_{Pre\text{-}Developed}$ = The volume of runoff from the site in the predeveloped condition.

$RV_{Developed}$ = The volume of runoff from the developed site.

4. Concentrated stormwater flow to unstable natural stormwater conveyance systems. Where the point of discharge releases stormwater into a natural stormwater conveyance system that is unstable, stormwater runoff following a land-disturbing activity shall be released into a channel at or below a peak flow rate ($Q_{Developed}$) based on the one-year 24-hour storm, calculated as follows or in accordance with another methodology that is demonstrated by the local program to achieve equivalent or more stringent results and is approved by the board:

$Q_{Developed} * RV_{Developed} \leq Q_{Forested} * RV_{Forested}$, where

$Q_{Developed}$ = The allowable peak flow rate from the developed site.

$Q_{Forested}$ = The peak flow rate from the site in a forested condition.

$RV_{Forested}$ = The volume of runoff from the site in a forested condition.

$RV_{Developed}$ = The volume of runoff from the developed site.

C. Flood protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of accepted hydrologic and hydraulic methodologies:

1. Concentrated stormwater flow to manmade stormwater conveyance systems. The point of discharge releases stormwater into a manmade stormwater conveyance system that, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm within the manmade stormwater conveyance system.

2. Concentrated stormwater flow to restored stormwater conveyance systems. The point of discharge releases stormwater into a stormwater conveyance system that (i) has been restored and is functioning as designed or (ii) will be restored. The applicant must demonstrate that the peak flow rate from the 10-year 24-hour storm following the land-disturbing activity will be confined within the system.

3. Concentrated stormwater flow to natural stormwater conveyance systems. The point of discharge releases stormwater into a natural stormwater conveyance system that currently does not flood during the 10-year 24-hour storm and, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm within the system.

4. Concentrated stormwater flow to natural stormwater conveyance systems where localized flooding exists during the 10-year 24-hour storm. The point of discharge releases a postdevelopment peak flow rate for the 10-year 24-hour storm that shall not exceed the predevelopment peak flow rate from the 10-year 24-hour storm based on forested conditions.

5. A local program may adopt alternate flood protection design criteria that (i) achieve equivalent or more stringent results, (ii) are based upon geographic, land use,

topographic, geologic, or other downstream conveyance factors, and (iii) are approved by the board.

D. One percent rule. If either of the following criteria are met, subsections A and B of this section do not apply:

1. Based on area. Prior to any land disturbance, the site's contributing drainage area to a point of discharge from the site is less than or equal to 1.0% of the total watershed area draining to that point of discharge; or

2. Based on peak flow rate. Based on the postdevelopment land cover conditions prior to the implementation of any stormwater quantity control measures, the development of the site results in an increase in the peak flow rate from the one-year 24-hour storm that is less than 1.0% of the existing peak flow rate from the one-year 24-hour storm generated by the total watershed area draining to that point of discharge.

E. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a detention facility or a stormwater conveyance system that conveys the runoff without causing down gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

F. For purposes of computing predevelopment runoff from prior developed sites, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the local program that actual site conditions warrant such considerations.

G. Predevelopment runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices in accordance with guidance provided in the Virginia Stormwater Management Handbook and by the qualifying local program.

H. Except where the compliance options under subdivisions B 4 and C 4 of this section are utilized, flooding and channel erosion impacts to stormwater conveyance systems shall be analyzed for each point of discharge in accordance with channel analysis guidance provided in Technical Bulletin # 1, Stream Channel Erosion Control, or in accordance with more stringent channel analysis guidance established by the qualifying local program and provided to the department. Such analysis shall include estimates of runoff from the developed site and the entire upstream watershed that contributes to that point of discharge. Good engineering practices and calculations in accordance with department guidance shall be used to evaluate postdevelopment runoff characteristics and site hydrology, and flooding and channel erosion impacts.

If the downstream owner or owners refuse to give permission to access the property for the collection of data, evidence of this refusal shall be given and arrangements made satisfactory to the local program to provide an alternative method for the collection of data to complete the analysis, such as through the use of photos, aerial surveys, "as built" plans, topographic maps, soils maps, and any other relevant information.

4VAC50-60-70. ~~Stream channel erosion.~~ (Repealed.)

~~A. Properties and receiving waterways downstream of any land disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.~~

~~B. The permit issuing authority shall require compliance with subdivision 19 of 4VAC50-30-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.~~

~~C. The permit issuing authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land disturbing activities. Therefore, in lieu of the reduction of the two year post-developed peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24 hour extended detention of the runoff generated by the one-year, 24-hour duration storm.~~

~~D. In addition to subsections B and C of this section permit-issuing authorities, by local ordinance may, or the board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include, but are not limited to, the following:~~

~~1. Criteria and procedures for channel analysis and classification.~~

~~2. Procedures for channel data collection.~~

~~3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.~~

~~4. Criteria for the selection of proposed natural or man-made channel linings.~~

4VAC50-60-72. Design storms and hydrologic methods.

A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.

B. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.

C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in this part.

D. The local program may allow for the use of the Rational Method for evaluating peak discharges or the Modified Rational Method for evaluating volumetric flows to stormwater conveyances with drainage areas of 200 acres or less.

4VAC50-60-74. Stormwater harvesting.

In accordance with § 10.1-603.4 of the Code of Virginia, stormwater harvesting is encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing water closets and urinals, and other water handling systems to the extent such systems are consistent with federal, state, and local regulatory authorities.

4VAC50-60-76. Linear development projects.

Unless exempt pursuant to § 10.1-603.8 B of the Code of Virginia, linear development projects shall control postdevelopment stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan developed in accordance with these regulations.

4VAC50-60-80. ~~Flooding.~~ (Repealed.)

~~A. Downstream properties and waterways shall be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.~~

~~B. The 10 year post developed peak rate of runoff from the development site shall not exceed the 10 year pre developed peak rate of runoff.~~

~~C. In lieu of subsection B of this section, localities may, by ordinance, adopt alternate design criteria based upon geographic, land use, topographic, geologic factors or other downstream conveyance factors as appropriate.~~

~~D. Linear development projects shall not be required to control post developed stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.~~

4VAC50-60-85. Stormwater management impoundment structures or facilities.

A. Construction of stormwater management impoundment structures or facilities within tidal or nontidal wetlands and perennial streams is not recommended.

B. Construction of stormwater management impoundment structures or facilities within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain is not recommended.

C. Stormwater management wet ponds and extended detention ponds that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity and spillway design for the 100-year storm event.

D. Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a geological study of the area has been conducted to determine the presence or absence of karst features that may be impacted by stormwater runoff and BMP placement.

E. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in 4VAC50-60-63 and the water quantity criteria set out in 4VAC50-60-66. Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation that identifies any necessary modifications to the BMP to ensure its structural integrity and maintain its water quality and quantity efficiencies. The person responsible for the land-disturbing activity is encouraged to screen for known existence of heritage resources in the karst features. Any Class V Underground Injection Control Well registration statements for stormwater discharges to improved sinkholes shall be included in the SWPPP.

4VAC50-60-90. ~~Regional (watershed-wide) stormwater management plans.~~ (Repealed.)

~~This section enables localities to develop regional stormwater management plans. State agencies intending to develop large tracts of land such as campuses or prison compounds are encouraged to develop regional plans where practical.~~

~~The objective of a regional stormwater management plan is to address the stormwater management concerns in a given~~

~~watershed with greater economy and efficiency by installing regional stormwater management facilities versus individual, site specific facilities. The result will be fewer stormwater management facilities to design, build and maintain in the affected watershed. It is also anticipated that regional stormwater management facilities will not only help mitigate the impacts of new development, but may also provide for the remediation of erosion, flooding or water quality problems caused by existing development within the given watershed.~~

~~If developed, a regional plan shall, at a minimum, address the following:~~

~~1. The specific stormwater management issues within the targeted watersheds.~~

~~2. The technical criteria in 4VAC50-60-40 through 4VAC50-60-80 as needed based on subdivision 1 of this section.~~

~~3. The implications of any local comprehensive plans, zoning requirements, local ordinances pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and other planning documents.~~

~~4. Opportunities for financing a watershed plan through cost sharing with neighboring agencies or localities, implementation of regional stormwater utility fees, etc.~~

~~5. Maintenance of the selected stormwater management facilities.~~

~~6. Future expansion of the selected stormwater management facilities in the event that development exceeds the anticipated level.~~

4VAC50-60-93. Stormwater management plan development.

A. A stormwater management plan for a land-disturbing activity shall apply these stormwater management technical criteria to the entire land-disturbing activity.

B. Individual lots or planned phases of developments shall not be considered separate land-disturbing activities, but rather the entire development shall be considered a single land-disturbing activity.

C. The stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

4VAC50-60-96. Comprehensive watershed stormwater management plans.

A. Local programs may develop comprehensive watershed stormwater management plans to be approved by the department that meet the water quality objectives, quantity objectives, or both of this chapter:

1. Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing land-disturbing site are achieved within the same HUC or within another locally designated watershed. Pertaining to water quantity objectives, the plan may provide for implementation of a combination of channel improvement, stormwater detention, or other measures that are satisfactory to the local program to prevent downstream erosion and flooding.

2. If the land use assumptions upon which the plan was based change or if any other amendments are deemed necessary by the local program, the local program shall provide plan amendments to the board for review and approval.

3. During the plan's implementation, the local program shall account for nutrient reductions accredited to the BMPs specified in the plan.

4. State and federal agencies may participate in comprehensive watershed stormwater management plans where practicable and permitted by the local program.

B. If the qualifying local program allows for a pro rata fee in accordance with § 15.2-2243 of the Code of Virginia, then the reductions required for a site by this chapter may be achieved by the payment of a pro rata fee sufficient to fund improvements necessary to adequately achieve those requirements in accordance with that section of the Code of Virginia and this chapter.

~~Part III~~
~~Local Programs~~

4VAC50-60-100. ~~Applicability.~~ (Repealed.)

~~This part specifies technical criteria, minimum ordinance requirements, and administrative procedures for all localities operating local stormwater management programs.~~

Part III A
Local Programs

4VAC50-60-102. Authority and applicability.

If a locality has adopted a local stormwater management program in accordance with the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia) and the board has deemed such program adoption consistent with the Virginia Stormwater Management Act and these regulations in accordance with § 10.1-603.3 F of the Code of Virginia, the board may authorize a locality to administer a qualifying local program. Pursuant to § 10.1-603.4, the board is required to establish standards and procedures for such an authorization.

This part specifies the minimum technical criteria and the local government ordinance requirements for a local program to be considered a qualifying local program. Such criteria include but are not limited to administration, plan review,

issuance of coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, inspection, and enforcement.

4VAC50-60-104. Technical criteria for qualifying local programs.

A. All qualifying local programs shall require compliance with the provisions of Part II (4VAC50-60-40 et seq.) of this chapter unless an exception is granted pursuant to 4VAC50-60-122 and shall comply with the requirements of 4VAC50-60-460 L.

B. When a locality operating a qualifying local program has adopted requirements more stringent than those imposed by this chapter in accordance with § 10.1-603.7 of the Code of Virginia or implemented a comprehensive stormwater management plan, the department shall consider such requirements in its review of state projects within that locality in accordance with Part IV (4VAC50-60-160 et seq.) of this chapter.

C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.

4VAC50-60-106. Qualifying local program administrative requirements.

A. A qualifying local program shall provide for the following:

1. Identification of the authority authorizing coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities, the plan reviewing authority, the plan approving authority, the inspection authority, and the enforcement authority;

2. Technical criteria to be used in the qualifying local program;

3. Procedures for the submission and approval of plans;

4. Inspection and monitoring of land-disturbing activities covered by a permit for compliance;

5. Procedures or policies for long-term inspection and maintenance of stormwater management facilities; and

6. Enforcement.

B. A locality shall adopt an ordinance(s) that incorporates the components set out in subsection A of this section and consent to follow procedures provided by the department for the issuance, denial, revocation, termination, reissuance, transfer, or modifications of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

C. A qualifying local program shall report to the department information related to the administration and implementation of the qualifying local program in accordance with 4VAC50-60-126.

D. A qualifying local program may require the submission of a reasonable performance bond or other financial surety and provide for the release of such sureties in accordance with the criteria set forth in § 10.1-603.8 of the Code of Virginia.

4VAC50-60-108. Qualifying local program stormwater management plan review.

A. A qualifying local program shall require stormwater management plans to be submitted for review and be approved prior to commencement of land-disturbing activities.

B. A qualifying local program shall approve or disapprove a stormwater management plan and required accompanying information according to the following:

1. Stormwater management plan review shall begin upon submission of a complete plan. A complete plan shall include the following elements:

a. The location of all points of stormwater discharge, receiving surface waters or karst features into which the stormwater discharges, and predevelopment and postdevelopment conditions for drainage areas, including final drainage patterns and changes to existing contours;

b. Contact information including the name, address, and telephone number of the property owner and the tax reference number and parcel number of the property or properties affected;

c. A narrative that includes a description of current site conditions and proposed development and final site conditions, including proposed stormwater management facilities and the mechanism, including an identification of financially responsible parties, through which the facilities will be operated and maintained during and after construction activity;

d. The location and the design of the proposed stormwater management facilities;

e. Information identifying the hydrologic characteristics and structural properties of soils utilized with the installation of stormwater management facilities;

f. Hydrologic and hydraulic computations of the predevelopment and postdevelopment runoff conditions for the required design storms;

g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;

h. A map or maps of the site that depicts the topography of the site and includes:

(1) All contributing drainage areas;

(2) Receiving surface waters or karst features into which stormwater will be discharged;

(3) Existing streams, ponds, culverts, ditches, wetlands, and other water bodies;

(4) Soil types, geologic formations, forest cover, and other vegetative areas;

(5) Current land use including existing structures, roads, and locations of known utilities and easements;

(6) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site;

(7) The limits of clearing and grading, and the proposed drainage patterns on the site;

(8) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

(9) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

i. 50% of the required fee in accordance with 4VAC50-60-820, and the required fee form must have been submitted.

2. Elements of the stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations.

3. Completeness of a plan and required accompanying information shall be determined by the qualifying local program, and the applicant shall be notified of any determination, within 15 calendar days of receipt.

a. If within those 15 days the plan is deemed to be incomplete based on the criteria set out in this subsection, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.

b. If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.

c. If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60 calendar days from the date of submission will be allowed for the review of the plan.

d. The qualifying local program shall act within 45 days on any plan that has been previously disapproved and resubmitted.

4. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter and of the qualifying local program.

5. If a plan meeting all requirements of this chapter and of the qualifying local program is submitted and no action is taken within the time specified above, the plan shall be deemed approved.

C. Notwithstanding the requirements of subsection A of this section, if allowed by the qualifying local program, an initial stormwater management plan may be submitted for review and approval when it is accompanied by an erosion and sediment control plan, preliminary stormwater design for the current and future site work, fee form, and 50% of the fee required by 4VAC50-60-820. Such plans shall be limited to the initial clearing and grading of the site unless otherwise allowed by the qualifying local program. Approval by the qualifying local program of an initial plan does not supersede the need for the submittal and approval of a complete stormwater management plan and the updating of the SWPPP prior to the commencement of activities beyond initial clearing and grading and other activities approved by the local program. The initial plan shall include information detailed in subsection B of this section to the extent required by the qualifying local program and such other information as may be required by the qualifying local program.

D. Each approved plan may be modified in accordance with the following:

1. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the qualifying local program. The qualifying local program shall have 60 calendar days to respond in writing either approving or disapproving such requests.

2. Based on an inspection, the qualifying local program may require amendments to the approved stormwater management plan to address the noted deficiencies and notify the permittee of the required modifications.

4VAC50-60-110. ~~Technical criteria for local programs.~~ (Repealed.)

~~A. All local stormwater management programs shall comply with the general technical criteria as outlined in 4VAC50-60-50.~~

~~B. All local stormwater management programs which contain provisions for stormwater runoff quality shall comply~~

~~with 4VAC50-60-60. A locality may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria. A locality may opt to calculate actual watershed specific or locality wide values for the average land cover condition based upon:~~

~~1. Existing land use data at time of local Chesapeake Bay Preservation Act Program or department stormwater management program adoption, whichever was adopted first;~~

~~2. Watershed or locality size; and~~

~~3. Determination of equivalent values of impervious cover for nonurban land uses which contribute nonpoint source pollution, such as agriculture, forest, etc.~~

~~C. All local stormwater management programs which contain provisions for stream channel erosion shall comply with 4VAC50-60-70.~~

~~D. All local stormwater management programs must contain provisions for flooding and shall comply with 4VAC50-60-80.~~

~~E. All local stormwater management programs which contain provisions for watershed or regional stormwater management plans shall comply with 4VAC50-60-110.~~

~~F. A locality that has adopted more stringent requirements or implemented a regional (watershed wide) stormwater management plan may request, in writing, that the department consider these requirements in its review of state projects within that locality.~~

~~G. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.~~

4VAC50-60-112. Qualifying local program authorization of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

A. Coverage shall be authorized by the qualifying local program under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have an approved initial stormwater management plan or an approved stormwater management plan for the land-disturbing activity.

2. The applicant must have submitted proposed right-of-entry agreements or easements from the owner for purposes of inspection and maintenance and proposed maintenance agreements, including inspection schedules, in accordance with 4VAC50-60-124.

3. The applicant must have an approved registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities.

4. The applicant must have submitted the required fee form and total fee required by 4VAC50-60-820.

5. Applicants submitting registration statements deemed to be incomplete must be notified within 15 working days of receipt by the qualifying local program that the registration statement is not complete and be notified (i) of what material needs to be submitted to complete the registration statement, and (ii) that the land-disturbing activity does not have coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. Coverage or termination of coverage shall be authorized through a standardized database or other method provided by the department. Such database shall include, at a minimum, permit number, operator name, activity name, acres disturbed, date of permit coverage, and site address and location as well as date of termination.

C. Coverage information pertaining to the VSMP General Permit for Discharges of Stormwater from Construction Activities shall be reported to the department in accordance with 4VAC50-60-126 by the qualifying local program.

D. The applicant shall be notified of authorization of permit coverage by the qualifying local program.

4VAC50-60-114. Inspections.

A. The qualifying local program or its designee shall inspect the land-disturbing activity during construction for compliance with the VSMP General Permit for Discharges of Stormwater from Construction Activities.

B. The person responsible for the development project or their designated agent shall submit to a qualifying local program a construction record drawing for permanent stormwater management facilities, appropriately sealed, and signed by a professional in accordance with all minimum standards and requirements pertaining to the practice of that profession pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. The qualifying local program shall have the construction record drawing and certification on file prior to the release of the portion of the performance bond or surety associated with the stormwater management facility.

C. The owners of stormwater management facilities shall be required to conduct inspections in accordance with an inspection schedule in a recorded maintenance agreement, and shall submit written inspection and maintenance reports to the qualifying local program upon request. Such reports, if consistent with a board-approved inspection program established in subsection D of this section, may be utilized by the qualifying local program if the inspection is conducted by a person who is licensed as a professional engineer, architect, certified landscape architect, or land surveyor pursuant to

Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 or who holds a certificate of competence from the board. The reports, if so utilized, must be kept on file with the qualifying local program

D. A qualifying local program shall establish an inspection program that ensures that the stormwater management facilities are being maintained as designed. Any inspection program shall be:

1. Approved by the board prior to implementation;

2. Established in writing;

3. Based on a system of priorities that takes into consideration the purpose and type of the facility, ownership and the existence of a recorded maintenance agreement and inspection schedule, the contributing drainage area, and downstream conditions;

4. Demonstrated to be an enforceable inspection program that meets the intent of the regulations and ensures that each stormwater management facility is inspected by the qualifying local program or its designee, not to include the owner, except as provided in subsection C of this section, at least every five years; and

5. Documented by inspection records.

E. Inspection reports shall be generated and kept on file in accordance with 4VAC50-60-126 for all stormwater management facilities inspected by the qualifying local program.

4VAC50-60-116. Qualifying local program enforcement.

A. A qualifying local program may incorporate the following components:

1. Informal and formal administrative enforcement procedures including:

a. Verbal warnings and inspection reports;

b. Notices of corrective action;

c. Consent special orders and civil charges in accordance with subdivision 7 of § 10.1-603.2:1 and § 10.1-603.14 D 2 of the Code of Virginia;

d. Notices to comply in accordance with § 10.1-603.11 of the Code of Virginia;

e. Special orders in accordance with subdivision 7 of § 10.1-603.2:1 of the Code of Virginia;

f. Emergency special orders in accordance with subdivision 7 of § 10.1-603.2:1 of the Code of Virginia; and

g. Public notice and comment periods pursuant to 4VAC50-60-660.

2. Civil and criminal judicial enforcement procedures including:

a. Schedule of civil penalties set out in subsection D of this section;

b. Criminal penalties in accordance with § 10.1-603.14 B and C of the Code of Virginia; and

c. Injunctions in accordance with §§ 10.1-603.12:4, 10.1-603.2:1 and 10.1-603.14 D 1 of the Code of Virginia.

B. A qualifying local program shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations and the local ordinance.

C. A qualifying local program may utilize the department's Stormwater Management Enforcement Manual as guidance in establishing policies and procedures.

D. A court may utilize as guidance the following Schedule of Civil Penalties set by the board in accordance with § 10.1-603.14 A of the Code of Virginia. The range contained within the schedule reflects the degree of harm caused by the violation, which is site-specific and may vary greatly from case to case, as may the economic benefit of noncompliance to the violator. Each day of violation of each requirement shall constitute a separate offense. Assignment of the degree of harm is a qualitative decision subject to the court's discretion. The court has the discretion to impose a maximum penalty of $32,500 per violation per day in accordance with § 10.1-603.14 A of the Code of Virginia.

1. Gravity-based Component	Marginal	Moderate	Serious	
Violations* and Frequency of Occurrence **	$$ x occurrences	$$ x occurrences	$$ x occurrences	SUBTOTAL
No Permit Registration (each month w/o coverage = 1 occurrence)	500 x ____	1,000 x ____	2,000 x ____	

No SWPPP (No SWPPP components including E&S Plan) (each month of land-disturbing without SWPPP = 1 occurrence)	1,000 x ____	1,500 x ____	2,000 x ____	
Incomplete SWPPP	300 x ____	500 x ____	1,000 x ____	
SWPPP not on site	100 x ____	300 x ____	500 x ____	
No approved Erosion and Sediment Control Plan	500 x ____	1,000 x ____	2,000 x ____	
Failure to install stormwater BMPs or erosion and sediment ("E&S") controls	300 x ____	500 x ____	1,000 x ____	
Stormwater BMPs or E&S controls improperly installed or maintained	250 x ____	500 x ____	750 x ____	
Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; unauthorized discharges of stormwater; failure to implement control measures for construction debris)	1,000 x ____	2,000 x ____	5,000 x ____	
Failure to conduct required inspections	500 x ____	2,000 x____	3,000 x ____	
Incomplete, improper or missed inspections (e.g., inspections not conducted by qualified personnel; site inspection reports do not include date, weather information, location of discharge, or are not certified, etc.)	300 x____	500 x ___	1,000 x ____	
			Subtotal #1	
2. Estimated Economic Benefit of Noncompliance (if applicable)			Subtotal #2	
3. Recommended civil penalty			Total (#1 and #2)	
* Each stormwater BMP or E&S control that is either not installed or improperly installed or maintained is a separate violation. ** The frequency of occurrence is per event unless otherwise noted.				

E. Pursuant to subdivision 2 of § 10.1-603.2:1 of the Code of Virginia, authorization to administer a qualifying local program shall not remove from the board the authority to enforce the provisions of the Virginia Stormwater Management Act and attendant regulations.

F. Pursuant to § 10.1-603.14 A of the Code of Virginia, amounts recovered by a qualifying local program shall be paid into the treasury of the locality in which the violation occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

4VAC50-60-118. Hearings.

A qualifying local program shall ensure that any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-603.12:6 of the Code of Virginia and shall ensure that all hearings held under this chapter shall be conducted in accordance with § 10.1-603.12:7 of the Code of Virginia or as otherwise provided by law.

4VAC50-60-120. ~~Requirements for local program and ordinance.~~ (Repealed.)

~~A. At a minimum, the local stormwater management program and implementing ordinance shall meet the following:~~

~~1. The ordinance shall identify the plan approving authority and other positions of authority within the program, and shall include the regulations and technical criteria to be used in the program.~~

~~2. The ordinance shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land development projects. The party~~

~~responsible for conducting inspections shall be identified. The local program authority shall maintain, either on-site or in local program files, a copy of the approved plan and a record of all inspections for each land development project.~~

~~B. The department shall periodically review each locality's stormwater management program, implementing ordinance, and amendments. Subsequent to this review, the department shall determine if the program and ordinance are consistent with the state stormwater management regulations and notify the locality of its findings. To the maximum extent practicable the department will coordinate the reviews with other local government program reviews to avoid redundancy. The review of a local program shall consist of the following:~~

~~1. A personal interview between department staff and the local program administrator or his designee;~~

~~2. A review of the local ordinance and other applicable documents;~~

~~3. A review of plans approved by the locality and consistency of application;~~

~~4. An inspection of regulated activities; and~~

~~5. A review of enforcement actions.~~

~~C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.~~

4VAC50-60-122. Qualifying local program exceptions.

A. A qualifying local program may grant exceptions to the provisions of Part II (4VAC50-60-40 et seq.) of this chapter through an administrative process. A request for an exception, including the reasons for making the request, shall be submitted in writing to the qualifying local program. An exception may be granted provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the qualifying local program grant an exception to the requirement that the land-disturbing activity obtain a permit.

D. A record of all exceptions granted shall be maintained by the qualifying local program and reported to the department in accordance with 4VAC50-60-126.

4VAC50-60-124. Qualifying local program stormwater management facility maintenance.

A. Responsibility for the operation and maintenance of stormwater management facilities in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner or other legally established entity and shall pass to any successor. The government entity implementing the qualifying local program shall be a party to each maintenance agreement. Such maintenance agreement shall include a schedule for inspections by the owner, and, in addition to ensuring that each facility is maintained as designed, shall ensure that the designed flow and drainage patterns from the site to a permanent facility are maintained. Such agreements may also contain provisions specifying that, where maintenance or repair of a stormwater management facility located on the owner's property is neglected, or the stormwater management facility becomes a public health or safety concern and the owner has failed to perform the necessary maintenance and repairs after receiving notice from the locality, the qualifying local program may perform the necessary maintenance and repairs and recover the costs from the owner. In the specific case of a public health or safety danger, the agreement may provide that the written notice may be waived by the locality.

B. The qualifying local program shall be notified of any transfer or conveyance of ownership or responsibility for maintenance of a stormwater management facility.

C. The qualifying local program shall require right-of-entry agreements or easements from the property owner for purposes of inspection and maintenance.

4VAC50-60-126. Qualifying local program report and recordkeeping.

A. On a fiscal year basis (July 1 to June 30), a qualifying local program shall report to the department by October 1 of each year in a format provided by the department. The information to be provided shall include the following:

1. Information on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;

2. Number of VSMP General Permit for Discharges of Stormwater from Construction Activities projects inspected and the total number of inspections by acreage categories determined by the department during the fiscal year;

3. Number and type of enforcement actions during the fiscal year; and

4. Number of exceptions applied for and the number granted or denied during the fiscal year.

B. A qualifying local program shall make information set out in subsection A of this section available to the department upon request.

C. A qualifying local program shall keep records in accordance with the following:

1. Permit files shall be kept for three years after permit termination. After three years, the permit file shall be delivered to the department by October 1 of each year.

2. Stormwater maintenance facility inspection reports shall be kept for five years from the date of inspection.

3. Stormwater maintenance agreements, design standards and specifications, postconstruction surveys, and maintenance records shall be maintained in perpetuity.

Part III B
Department of Conservation and Recreation Administered Local Programs

4VAC50-60-128. Authority and applicability.

In the absence of a qualifying local program, the department, in accordance with an adoption and implementation schedule set by the board and upon board approval, shall administer the local stormwater management program in a locality in accordance with § 10.1-603.3 C of the Code of Virginia. This part specifies the minimum technical criteria for a department-administered local stormwater management program in accordance with the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia), and the standards and criteria established in these regulations by the board pursuant to its authority under that article. Such criteria include but are not limited to administration, plan review, issuance of coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, issuance of individual permits, inspection, enforcement, and education and outreach components.

4VAC50-60-130. ~~Administrative procedures: stormwater management plans.~~ (Repealed.)

~~A. Localities shall approve or disapprove stormwater management plans according to the following:~~

~~1. A maximum of 60 calendar days from the day a complete stormwater management plan is accepted for review will be allowed for the review of the plan. During the 60-day review period, the locality shall either approve or disapprove the plan and communicate its decision to the applicant in writing. Approval or denial shall be based on the plan's compliance with the locality's stormwater management program.~~

~~2. A disapproval of a plan shall contain the reasons for disapproval.~~

~~B. Each plan approved by a locality shall be subject to the following conditions:~~

~~1. The applicant shall comply with all applicable requirements of the approved plan, the local program, this chapter and the Act, and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.~~

~~2. The land development project shall be conducted only within the area specified in the approved plan.~~

~~3. The locality shall be allowed, after giving notice to the owner, occupier or operator of the land development project, to conduct periodic inspections of the project.~~

~~4. The person responsible for implementing the approved plan shall conduct monitoring and submit reports as the locality may require to ensure compliance with the approved plan and to determine whether the plan provides effective stormwater management.~~

~~5. No changes may be made to an approved plan without review and written approval by the locality.~~

4VAC50-60-132. Technical criteria.

A. The department-administered local stormwater management programs shall require compliance with the provisions of Part II (4VAC50-60-40 et seq.) of this chapter unless an exception is granted pursuant to 4VAC50-60-142 D and shall comply with the requirements of 4VAC50-60-460 L.

B. When reviewing a federal project, the department shall apply the provisions of this chapter.

C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies to impose stricter technical criteria or other requirements as allowed by law.

4VAC50-60-134. Administrative authorities.

A. The department is the permit-issuing authority, plan approving authority, and the enforcement authority.

B. The department or its designee is the plan reviewing authority and the inspection authority.

C. The department shall assess and collect fees.

D. The department may require the submission of a reasonable performance bond or other financial surety in accordance with the criteria set forth in § 10.1-603.8 of the Code of Virginia prior to the issuance of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities and in accordance with the following:

1. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management BMPs approved under the stormwater management plan, plus 25%;

2. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions that may be required in accordance with the approved stormwater management plan;

3. Upon failure by the applicant to take such action as required, the department may act and may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held; and

4. Within 60 days of the completion of the requirements and conditions of the VSMP General Permit for Discharges of Stormwater from Construction Activities and the department's acceptance of the Notice of Termination, such bond, cash escrow, letter of credit, or other legal arrangement shall be refunded to the applicant.

4VAC50-60-136. Stormwater management plan review.

A. Stormwater management plans shall be reviewed and approved by the department prior to commencement of land-disturbing activities.

B. The department shall approve or disapprove a stormwater management plan and required accompanying information according to the criteria set out for a qualifying local program in 4VAC50-60-108 B.

C. The department shall not accept initial stormwater management plans.

D. Each approved stormwater management plan may be modified in accordance with the criteria set out for a qualifying local program in 4VAC50-60-108 D.

4VAC50-60-138. Issuance of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

The department shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have a department-approved stormwater management plan for the land-disturbing activity.

2. The applicant must have submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with Part VII (4VAC50-60-360 et seq.) of this chapter and the requirements of the VSMP General Permit for Discharges of Stormwater from Construction Activities, which acknowledges that a SWPPP has been developed and will be implemented, and the registration statement must have been reviewed and approved prior to the commencement of land disturbance.

3. The applicant must have submitted the required fee form and fee for the registration statement seeking coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

4. Applicants submitting registration statements deemed to be incomplete must be notified within 15 working days of receipt by the department that the registration statement is not complete and be notified (i) of what material needs to be submitted to complete the registration statement, and (ii) that the land-disturbing activity does not have coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

5. The applicant shall be notified of authorization of permit coverage by the department.

6. Individual permits for qualifying land-disturbing activities may be issued at the discretion of the board or its designee pursuant to 4VAC50-60-410 B 3.

4VAC50-60-140. ~~Administrative procedures: exceptions.~~ (Repealed.)

~~A. A request for an exception shall be submitted, in writing, to the locality. An exception from the stormwater management regulations may be granted, provided that: (i) exceptions to the criteria are the minimum necessary to afford relief and (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved.~~

~~B. Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.~~

4VAC50-60-142. Inspections, enforcement, hearings, exceptions, and stormwater management facility maintenance.

A. Inspections shall be conducted by the department in accordance with 4VAC50-60-114.

B. Enforcement actions shall be conducted by the department in accordance with 4VAC50-60-116. The department's Stormwater Management Enforcement Manual shall serve as guidance to be utilized in enforcement actions under the Stormwater Management Act and attendant regulations. Any amounts assessed by a court as a result of a summons issued by the board or the department shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 10.1-603.4:1 of the Code of Virginia.

C. Hearings shall be conducted by the department in accordance with 4VAC50-60-118.

D. Exceptions may be granted by the department in accordance with 4VAC50-60-122.

E. Stormwater management facility maintenance shall be conducted in accordance with 4VAC50-60-124.

4VAC50-60-150. ~~Administrative procedures: maintenance and inspections.~~ (Repealed.)

~~A. Responsibility for the operation and maintenance of stormwater management facilities, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.~~

~~B. In the case of developments where lots are to be sold, permanent arrangements satisfactory to the locality shall be made to ensure continued performance of this chapter.~~

~~C. A schedule of maintenance inspections shall be incorporated into the local ordinance. Ordinances shall provide that in cases where maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the locality has the authority to perform the work and to recover the costs from the owner.~~

~~D. Localities may require right-of-entry agreements or easements from the applicant for purposes of inspection and maintenance.~~

~~E. Periodic inspections are required for all stormwater management facilities. Localities shall either:~~

~~1. Provide for inspection of stormwater management facilities on an annual basis; or~~

~~2. Establish an alternative inspection program which ensures that stormwater management facilities are functioning as intended. Any alternative inspection program shall be:~~

~~a. Established in writing;~~

~~b. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and~~

~~c. Documented by inspection records.~~

~~F. During construction of the stormwater management facilities, localities shall make inspections on a regular basis.~~

~~G. Inspection reports shall be maintained as part of a land development project file.~~

4VAC50-60-154. Reporting and recordkeeping.

A. The department shall maintain a current database of permit coverage information for all projects that includes permit number, operator name, activity name, acres disturbed, date of permit coverage, and site address and location.

B. On a fiscal year basis (July 1 to June 30), a local program shall report to the department by October 1 in accordance with 4VAC50-60-126 A.

C. On a fiscal year basis (July 1 to June 30), the department shall compile information provided by local programs.

D. Records shall be maintained by the department in accordance with 4VAC50-60-126 C.

Part III C
Department of Conservation and Recreation Procedures for Review of Qualifying Local Programs

4VAC50-60-156. Authority and applicability.

This part specifies the criteria that the department will utilize in reviewing a locality's administration of a qualifying local program pursuant to § 10.1-603.12 of the Code of Virginia following the board's approval of such program in accordance with the Virginia Stormwater Management Act and these regulations.

4VAC50-60-157. Stormwater management program review.

A. The department shall review each board-approved qualifying local program at least once every five years on a review schedule approved by the board. The department may review a qualifying local program on a more frequent basis if deemed necessary by the board and shall notify the local government if such review is scheduled.

B. The review of a board-approved qualifying local program shall consist of the following:

1. An interview between department staff and the qualifying local program administrator or his designee;

2. A review of the local ordinance(s) and other applicable documents;

3. A review of a subset of the plans approved by the qualifying local program and consistency of application including exceptions granted;

4. An accounting of the receipt and of the expenditure of fees received;

5. An inspection of regulated activities; and

6. A review of enforcement actions and an accounting of amounts recovered through enforcement actions.

C. To the extent practicable, the department will coordinate the reviews with other local government program reviews to avoid redundancy.

D. The department shall provide its recommendations to the board within 90 days of the completion of a review. Such recommendations shall be provided to the locality in advance of the meeting.

E. The board shall determine if the qualifying local program and ordinance are consistent with the Act and state stormwater management regulations and notify the qualifying local program of its findings.

F. If the board determines that the deficiencies noted in the review will cause the qualifying local program to be out of compliance with the Stormwater Management Act and its attendant regulations, the board shall notify the qualifying local program concerning the deficiencies and provide a reasonable period of time for corrective action to be taken. If the qualifying local program agrees to the corrective action recommended by the board, the qualifying local program will be considered to be conditionally compliant with the Stormwater Management Act and its attendant regulations until a subsequent finding is issued by the board. If the qualifying local program fails to take the corrective action within the specified time, the board may take action pursuant to § 10.1-603.12 of the Code of Virginia.

Part III D
Virginia Soil and Water Conservation Board Authorization for Qualifying Local Programs

4VAC50-60-158. Authority and applicability.

Subdivision 1 of § 10.1-603.4 of the Code of Virginia requires that the board establish standards and procedures for authorizing a locality to administer a stormwater management program. In accordance with that requirement, and with the further authority conferred upon the board by the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia), this part specifies the procedures the board will utilize in authorizing a locality to administer a qualifying local program.

4VAC50-60-159. Authorization procedures for qualifying local programs.

A. A locality required to adopt a program in accordance with § 10.1-603.3 A of the Code of Virginia or those electing to seek authorization to administer a qualifying local program must submit to the board an application package which, at a minimum, contains the following:

1. The local program ordinance(s);

2. A funding and staffing plan based on the projected permitting fees; and

3. The policies and procedures, including but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities, for the administration, plan review, permit issuance, inspection, and enforcement components of the program.

B. Upon receipt of an application package, the board or its designee shall have 20 calendar days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria set out in subsection A of this section, the board or its designee must identify in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the board or its designee shall have 90 calendar days for the review of the application package. During the 90-day review period, the board or its designee shall either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the locality in writing. If the application is not approved, the reasons for not approving the application shall be provided to the locality in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and these regulations.

D. A locality required to adopt a qualifying local program in accordance with § 10.1-603.3 A of the Code of Virginia shall submit a complete application package for the board's review pursuant to a schedule set by the board in accordance with § 10.1-603.3 and shall adopt a qualifying local program consistent with the Act and this chapter within the timeframe established pursuant to § 10.1-603.3.

E. A locality not required to adopt a qualifying local program in accordance with § 10.1-603.3 A but electing to adopt a qualifying local program shall notify the board in accordance with the following:

1. A locality electing to adopt a qualifying local program may notify the board of its intention within six months of the effective date of these regulations. Such locality shall submit a complete application package for the board's review pursuant to a schedule set by the board and shall adopt a qualifying local program within the timeframe established by the board.

2. A locality electing to adopt a qualifying local program that does not notify the board within the initial six-month period of its intention may thereafter notify the board at any regular meeting of the board. Such notification shall include a proposed schedule for adoption of a qualifying local program within a timeframe agreed upon by the board.

F. The department shall administer the responsibilities of the Act and this chapter in any locality in which a qualifying local program has not been adopted. The department shall develop a schedule, to be approved by the board, for adoption and implementation of the requirements of this chapter in such localities. Such schedule may include phases of implementation and shall be based upon considerations including the typical number of permitted projects located within a locality, total number of acres disturbed by such permitted projects, and such other considerations as may be deemed necessary by the board.

DOCUMENTS INCORPORATED BY REFERENCE (4VAC50-60)

Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, EPA Cooperative Agreement X-82907801-0, October 2004, by Center for Watershed Protection and Robert Pitt, University of Alabama, available on the Internet at http://www.cwp.org/idde_verify.htm.

Getting in Step – A Guide for Conducting Watershed Outreach Campaigns, EPA-841-B-03-002, December 2003, U.S. Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds, available on the Internet at http://www.epa.gov/owow/watershed/outreach/documents/getnstep.pdf, or may be ordered from National Service Center for Environmental Publications, telephone 1-800-490-9198.

Municipal Stormwater Program Evaluation Guidance, EPA-833-R-07-003, January 2007 (field test version), U.S. Environmental Protection Agency, Office of Wastewater Management, available on the Internet at http://cfpub.epa.gov/npdes/docs.cfm?program_id=6&view=allprog&sort=name#ms4_guidance, or may be ordered from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone 1-800-553-6847 or (703) 605-6000.

Technical Bulletin #1 - Stream Channel Erosion Control, Virginia Department of Conservation and Recreation, 2000.

Technical Memorandum – The Runoff Reduction Method, April 2008, and beta-version addendum, September 2008.

Virginia Runoff Reduction Method Worksheet, September 2008.

VA.R. Doc. No. R08-587; Filed June 2, 2009, 2:36 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

REGISTRAR'S NOTICE: Pursuant to § 2.2-4007.06 of the Code of Virginia, the final regulations published in 25:16 VA.R. 2872-2968 April 13, 2009, were suspended in order to solicit additional public comments. Notice of the suspension was published in 25:16 VA.R. 2968 April 13, 2009. On May 28, 2009, the Board of Education readopted the previously published final regulations without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulations is not set out. Refer to 25:16 VA.R. 2872-2968 April 13, 2009, for the full text of the final regulations that becomes effective on July 7, 2009.

Titles of Regulations: **8VAC20-80. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (repealing 8VAC20-80-10 through 8VAC20-80-190).**

8VAC20-81. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (adding 8VAC20-81-10 through 8VAC20-81-340).

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia; 20 USC § 1400 et seq.; 34 CFR Part 300.

Effective Date: July 7, 2009.

Agency Contact: Melissa Smith, Coordinator of Administrative Services, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-0524, or email melissa.smith@doe.virginia.gov.

Summary:

This action represents the Board of Education's readoption of the final regulations on May 28, 2009, with no changes from its adoption at the September 28, 2008, Board of Education meeting. Refer to 25:16 VA.R. 2872-2968 April 13, 2009, for the full text of the final regulations that becomes effective on July 7, 2009.

The Board of Education is repealing the text of the current regulations (8VAC20-80) and promulgating new regulations (8VAC20-81). There are a number of substantive changes in the regulations, including the following areas: (i) functions of the Virginia Department of Education (VDOE); (ii) responsibilities of local school divisions and state-operated programs; (iii) qualifications for educational interpreters; (iv) child find; (v) eligibility determinations; (vi) development, review and revision of a student's individualized education program (IEP); (vii) parentally placed private school students; (viii) discipline; (ix) procedural safeguards, including the appointment of surrogate parents and dispute resolution; (x) local educational agency administration and governance; (xi) funding; and (xii) requirements regarding highly qualified personnel.

In response to public comments received, several provisions that were proposed to be significantly revised or deleted have been retained, including provisions regarding parental consent for the termination of special education and related services and the current administration of the due process system.

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

VA.R. Doc. No. R07-95; Filed June 3, 2009, 10:50 a.m.

Final Regulation

Title of Regulation: **8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8VAC20-131-5, 8VAC20-131-30, 8VAC20-131-50, 8VAC20-131-60, 8VAC20-131-80, 8VAC20-131-100, 8VAC20-131-140, 8VAC20-131-210, 8VAC20-131-270, 8VAC20-131-280, 8VAC20-131-290, 8VAC20-131-300, 8VAC20-131-310, 8VAC20-131-325, 8VAC20-131-360).**

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

Effective Date: July 31, 2009.

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

Summary:

The amendments (i) establish requirements for the Standard Technical and Advanced Technical Diplomas pursuant to Chapters 859 and 919 of the 2007 Acts of Assembly; (ii) establish a graduation and completion index where each school with a graduating class must achieve a minimum of 85 percentage points on the board's index in order to be rated Fully Accredited, (iii) establish a new accreditation rating called "Provisionally Accredited-Graduation Rate" to allow a phase-in period for achieving the 85 points needed on the graduation and completion index; (iv) prohibit schools from administering to any student more than one test in any content area in each year; (v) require two additional standard credits for the Advanced Studies Diploma; (vi) beginning with seventh graders in the 2010-2011 academic year, require schools to develop a personal Academic and Career Plan for each student by the fall of the student's eighth-grade year; (vii) require that principals notify the parents of students removed from class for disciplinary reasons for two or more consecutive days; and (viii) add language to permit school divisions to receive recognitions and rewards established for the Virginia Index of Performance incentive program for accountability performance.

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

Part I
Definitions and Purpose

8VAC20-131-5. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Those students are reported in fall membership at the institution; and

2. At a minimum, the institution meets the preaccreditation eligibility requirements of these regulations as adopted by the Board of Education.

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

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

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

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

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

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

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

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

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

Part III
Student Achievement

8VAC20-131-30. Student achievement expectations.

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

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

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

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

E. Each student in middle and secondary schools shall take all applicable end-of-course SOL tests following course instruction. Students who achieve a passing score on an end-of-course SOL test shall be awarded a verified unit of credit in that course in accordance with the provisions of 8VAC20-131-110. Students may earn verified units of credit in any courses for which end-of-course SOL tests are available. Middle and secondary schools may consider the student's end-of-course SOL test score in determining the student's final course grade. However, no student who has failed an end-of-course SOL test but passed the related course shall be prevented from taking any other course in a content area and from taking the applicable end-of-course SOL test. The board may approve additional tests to verify student achievement in accordance with guidelines adopted for verified units of credit described in 8VAC20-131-110.

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

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

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

8VAC20-131-50. Requirements for graduation.

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

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

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

B. Requirements for a Standard Diploma.

1. Beginning with the ninth-grade [~~classes~~ class] of ~~2003-04~~ [~~2009-2010~~ 2010-2011] and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with a Standard Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics[1]	3	1
Laboratory Science[2,6]	3	1
History and Social Sciences[3,6]	3	1
Health and Physical Education	2	
[Foreign Language,] Fine Arts or Career and Technical Education [[7]]	[~~1~~ 2]	
[~~Foreign Language,~~] Economics [~~or~~ and] Personal Finance	1	
Electives[4]	~~6~~ [~~5~~ 4]	
Student Selected Test[5]		1
Total	22	6

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

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

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

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

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

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

[[7]Pursuant to § 22.1-253.13:4 of the Code of Virginia, credits earned for this requirement shall include one credit in fine or performing arts or career and technical education.]

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

C. Requirements for a Standard Technical Diploma.

[1. Beginning with the ninth-grade class of 2010-2011 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2.] Credits required for graduation with a Standard Technical Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics[1]	3	1
Laboratory Science[2,5]	3	1
History and Social Sciences[3,5]	3	1
Health and Physical Education	2	
Fine Arts [, or] Foreign Language [, ~~Economics or Personal Finance~~]	1	
[Economics and Personal Finance]	[1]	
Career and Technical Education[4]	4	
Electives	[~~2~~ 1]	
Student Selected[6]		1
Total	22	6

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

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

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

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

career concentration includes a specific assessment approved by the board and the student is eligible to take the assessment, then the student must take this assessment.]

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

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

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

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

[1. Beginning with the ninth-grade class of 2010-2011 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2.] Credits required for graduation with an Advanced Studies Diploma.

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

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

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

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

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

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

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

E. Requirements for an Advanced Technical Diploma. [~~(*Contingent upon passage of the VDOE legislative proposal.)~~] Any student who meets the requirements for both

the Advanced Studies and the Advanced Technical diploma may choose between these two diplomas.

[1. Beginning with the ninth-grade class of 2010-2011 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2.] Credits required for graduation with an Advanced Technical Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics[1]	4	2
Laboratory Science[2]	4	2
History and Social Sciences[3]	4	2
Foreign Language[4]	3	
Health and Physical Education	2	
[Economics and Personal Finance]	[1]	
Fine Arts or [~~Economics~~ Career and Technical Education]	1	
Career and Technical Education[5]	[4 3]	
Student Selected Test[6]		1
Total	26	9

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

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

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

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

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

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

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

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

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

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

3. The student who has chosen to pursue a Modified Standard Diploma shall also be allowed to pursue the Standard Diploma, ~~or~~ Standard Technical Diploma, Advanced Studies Diploma or Advanced Technical Diploma at any time throughout that student's high school career, and the student must not be excluded from courses and tests required to earn a Standard or Advanced Studies Diploma.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The Board of Education's Career and Technical Education Seal will be awarded to students who earn a Standard ~~or~~ Diploma, Standard Technical Diploma, Advanced Studies Diploma or Advanced Technical Diploma and complete a prescribed sequence of courses in a career and technical education concentration or specialization that they choose and maintain a "B" or better average in those courses; or (i) pass an examination or an occupational competency assessment in a career and technical education concentration or specialization that confers certification or occupational competency credential from a recognized industry, trade or professional association or (ii) acquire a professional license in that career and technical education field from the Commonwealth of Virginia. The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements.

4. The Board of Education's Seal of Advanced Mathematics and Technology will be awarded to students

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

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

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

~~J.~~ L. Students completing graduation requirements in a summer school program shall be eligible for a diploma. The last school attended by the student during the regular session shall award the diploma unless otherwise agreed upon by the principals of the two schools.

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

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

8VAC20-131-60. Transfer students.

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

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

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

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

Nothing in these standards shall prohibit a public school from accepting standard units of credit toward graduation awarded to students who transfer from all other schools when the courses for which the student receives credit generally match the description of or can be substituted for courses for which the receiving school gives standard credit, and the

school from which the child transfers certifies that the courses for which credit is given meet the requirements of 8VAC20-131-110 A.

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

E. The academic record of a student transferring from other Virginia public schools shall be sent directly to the school receiving the student upon request of the receiving school in accordance with the provisions of the 8VAC20-150, Management of the Student's Scholastic Record in the Public Schools of Virginia. [The State Testing Identifier (STI) for students who transfer into a Virginia public school from another Virginia public school shall be retained by the receiving school.]

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

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

G. Students entering a Virginia public high school for the first time after the tenth grade shall earn as many credits as possible toward the graduation requirements prescribed in 8VAC20-131-50. However, schools may substitute courses required in other states in the same content area if the student is unable to meet the specific content requirements of 8VAC20-131-50 without taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he otherwise would have graduated. In any event, no such student shall earn fewer than the following number of verified units, nor shall such students be required to take SOL tests or additional tests as defined in 8VAC20-131-110 for verified units of credit in courses previously completed at another school or program of study, unless necessary to meet the requirements listed in subdivisions 1 and 2 of this subsection:

1. For a Standard Diploma or Standard Technical Diploma:

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

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

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

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

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

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

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

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

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

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

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

[8VAC20-131-80. Instructional program in elementary schools.

A. The elementary school shall provide each student a program of instruction that corresponds to the Standards of Learning for English, mathematics, science, and history/social science. In addition, each school shall provide instruction in art, music, and physical education and health and shall require students to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the Board of Education.

B. In kindergarten through grade 3, reading, writing, spelling, and mathematics shall be the focus of the instructional program. Schools shall maintain~~, in a manner prescribed by the Board of Education,~~ an early skills and knowledge achievement record in reading and mathematics for each student in grades kindergarten through grade 3 to monitor student progress and to promote successful achievement on the third grade SOL tests. This record shall be included with the student's records if the student transfers to a new school.

C. To provide students with sufficient opportunity to learn, a minimum of 75% of the annual instructional time of 990 hours shall be given to instruction in the disciplines of English, mathematics, science, and history/social science. Students who are not successfully progressing in early reading proficiency or who are unable to read with comprehension the materials used for instruction shall receive additional instructional time in reading, which may include summer school.

D. Elementary schools are encouraged to provide instruction in foreign languages.]

[8VAC20-131-100. Instructional program in secondary schools.

A. The secondary school shall provide each student a program of instruction in the academic areas of English, mathematics, science, and history/social science that enables each student to meet the graduation requirements described in 8VAC20-131-50 and shall offer opportunities for students to pursue a program of studies in foreign languages, fine arts, and career and technical areas including:

1. Career and technical education choices that prepare the student as a career and technical education program completer in one of three or more occupational areas and that prepare the student for technical or preprofessional postsecondary programs;

2. Coursework and experiences that prepare the student for college-level studies including access to at least three Advanced Placement (AP) courses, college-level courses for degree credit, International Baccalaureate (IB) courses, Cambridge courses, or any combination thereof;

3. Preparation for college admissions tests; and

4. Opportunities to study and explore the fine arts and foreign languages.

B. Minimum course offerings for each secondary school shall provide opportunities for students to meet the graduation requirements stated in 8VAC20-131-50 and must include:

English	4
Mathematics	4
Science (Laboratory)	4
History and Social Sciences	4
Foreign Language	3
Electives	~~4~~ 3
Career and Technical Education	11
Fine Arts	2
Health and Physical Education	2
Economics and Personal Finance	1
Total Units	38

C. Classroom driver education may count for 36 class periods of health education. Students shall not be removed

from classes other than health and physical education for the in-car phase of driver education.

D. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading, which may include summer school.]

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

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

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

1. Written approval of the high school principal prior to participation in dual enrollment must be obtained;

2. The college must accept the student for admission to the course or courses; and

3. The course or courses must be given by the college for degree credits (no remedial courses will be accepted).

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

Beginning with the [~~2009-2010~~ 2010-2011] academic year, all [~~middle~~] schools shall [~~develop and maintain~~ begin development of] a personal Academic and Career Plan for each [~~seventh- and eighth-grade that includes specific components established by the Board of Education. Beginning with the 2010-2011 academic year, students~~ seventh-grade student with completion by the fall of the student's eighth-grade year. Students who transfer from other than a Virginia public school into the eighth grade shall have the Plan developed as soon as practicable following enrollment. Beginning with the 2011-2012 academic year, students] who transfer into a Virginia public school after their eighth-grade year shall have an Academic and Career Plan developed upon enrollment. The components of the Plan shall include, but not be limited to, the student's [~~educational goals and~~] program of study for high school graduation and a postsecondary career pathway based on the student's academic and career interests. The Academic and Career Plan shall be developed [in accordance with guidelines established by the Board of Education] and signed by the student, student's parent or guardian, and school official(s) designated by the principal. The Plan shall be included in the student's record and shall be reviewed and updated, if necessary, before the student enters the ninth and eleventh grades. The school shall have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the Plan. [Any personal academic and career plans prescribed by local school boards for students in grades 7 through 12 and in effect as of June 30, 2009, are approved to continue without further action by the board.]

Part V
School and Instructional Leadership

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

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

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

1. Protect the academic instructional time from unnecessary interruptions and disruptions and enable the professional teaching staff to spend the maximum time possible in the teaching/learning process by keeping to a minimum clerical responsibility and the time students are out of class;

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

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

a. Direct and require appropriate prevention, intervention, and/or remediation to those students

performing below grade level or not passing the SOL tests;

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

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

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

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

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

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

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

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

8. Notify the [~~parents~~ parent or guardian] of students removed from class for disciplinary reasons for two or more consecutive days in whole or in part. [The school shall have met its obligation if it makes a good faith effort to notify the parent or guardian.]

C. As the school manager, the principal shall:

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

2. Work with the community to involve parents and citizens in the educational program and facilitate communication with parents by maintaining and disseminating a current student handbook of policies and procedures that includes the school division's standards of student conduct and procedures for enforcement, along with other matters of interest to parents and students;

3. Maintain a current record of licensure, endorsement, and in-service training completed by staff; and

4. Maintain records of receipts and disbursements of all funds handled. These records shall be audited annually by a professional accountant approved by the local school board.

Part VII
School and Community Communications

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

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

1. Involve parents, citizens, community agencies, and representatives from business and industry in developing, disseminating, and explaining the biennial school plan; on advisory committees; in curriculum studies; and in evaluating the educational program.

2. Provide annually to the parents and the community the School Performance Report Card in a manner prescribed by the board. The information contained therein will be for the most recent three-year period. Such information shall include but not be limited to:

a. Virginia assessment program results [~~including the percentage of students tested, as well as the percentage of students not tested~~ by percentage of participation and proficiency and disaggregated by student subgroups].

[~~b. Performance of student subgroups on the Virginia assessment program as appropriate.~~

~~c.~~ b.] The accreditation rating [~~awarded to~~ earned by] the school.

[~~d.~~ c.] Attendance rates for students.

[~~e.~~ d.] Information related to school safety to include, but not limited to, incidents of [~~physical~~ crime and] violence [~~(including fighting and other serious offenses), possession of firearms, and possession of other weapons~~].

[~~f.~~ e.] Information related to qualifications and [~~experience~~ educational attainment] of the teaching staff [~~including the percentage of the school's teachers endorsed in the area of their primary teaching assignment~~].

[~~g.~~ f.] In addition, secondary schools' School Performance Report Cards shall include the following:

(1) Advanced Placement (AP) information to include percentage of students who take AP courses and percentage of [~~those~~] students who take AP tests;

(2) International Baccalaureate (IB) and Cambridge course information to include percentage of students who are enrolled in IB or Cambridge programs and percentage of students who receive IB or Cambridge Diplomas;

(3) College-level course information to include percentage of students who take college-level courses including dual enrollment courses;

(4) [~~Percentage~~ Number and percentage] of (i) graduates by diploma type as prescribed by the Board of Education, (ii) certificates awarded to the senior class including GED credentials, and (iii) students who do not complete high school;

(5) [~~Information on the~~ The] number of students obtaining industry certifications, and passing state licensure examinations and occupational competency assessments while still in high school; and

(6) [~~Percentage~~ Number and percentage] of drop-outs.

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

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

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

1. The learning objectives developed in accordance with the provisions of 8VAC20-131-70 to be achieved at their child's grade level or, in high school, a copy of the syllabus for each of their child's courses, and a copy of the school division promotion, retention, and remediation policies;

2. The Standards of Learning applicable to the child's grade or course requirements and the approximate date and potential impact of the child's next SOL testing; and

3. An annual notice to students in all grade levels of all requirements for Standard, Standard Technical, Advanced Studies, Advanced Technical and Modified Standard Diplomas, and the board's policies on promotion and retention as outlined in 8VAC20-131-30.

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

Part VIII
School Accreditation

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

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

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

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

2. The percentage of students graduating from or completing high school based on a graduation and completion index prescribed by the Board of Education. The accreditation rating of any school with a twelfth grade shall be determined based on achievement of required SOL pass rates and percentage points on the board's graduation and completion index. School accreditation shall be determined by the school's current year index points or a trailing three-year average of index points that includes the current year and the two most recent years, whichever is higher. The Board of Education's graduation and completion index shall include weighted points for diploma graduates (100 points), GED recipients (75 points), students not graduating but still in school (70 points), and students earning certificates of program completion [(~~60~~ 25] points). The Board of Education's graduation and completion index shall account for all students in the graduating class's ninth-grade cohort, plus students transferring in, minus students transferring out and deceased students. Those students who are not included in one of the preceding categories [~~(i.e. students who dropout)~~] will also be included in the index.

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

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

C. Subject to the provisions of [~~8VAC20-131-330~~ 8VAC20-131-350], the governing school board of special purpose schools such as those provided for in § 22.1-26 of the Code of Virginia, Governor's schools, special education schools, alternative schools, or career and technical schools that serve as the student's school of principal enrollment may seek approval of an alternative accreditation plan from the Board of Education. Schools offering alternative education programs and schools with [~~an enrollment~~ a graduation cohort of] 50 or fewer students [~~in the ninth grade cohort~~ as

defined by the graduation rate formula adopted by the board] may request that the [~~Board of Education~~ board] approve an alternative accreditation plan to meet the graduation and completion index benchmark. Special purpose schools with alternative accreditation plans shall be evaluated on standards appropriate to the programs offered in the school and approved by the board prior to August 1 of the school year for which approval is requested. Any student graduating from a special purpose school with a Standard, Advanced Studies, or Modified Standard Diploma must meet the requirements prescribed in 8VAC20-131-50.

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

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

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

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

4. Students who transfer into a Virginia middle or high school from home instruction, or from another state or country, and enroll in a course for which there is an end-of-course SOL test, shall be expected to take the test or additional tests for that course approved by the board as outlined in 8VAC20-131-110. If the transfer takes place after 20 instructional hours per course have elapsed following the opening of school or beginning of the semester, if applicable, the scores on those tests may be used in calculating school accreditation ratings in the year the transfer occurs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Purpose and objectives of the experimental/innovative programs;

2. Description and duration of the programs;

3. Anticipated outcomes;

4. Number of students affected;

5. Evaluation procedures; and

6. Mechanisms for measuring goals, objectives, and student academic achievement.

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

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

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

1. Fully Accredited;

2. Accredited with Warning in (specified academic area or [~~areas)~~ areas and/or in achievement of the minimum threshold for the graduation and completion index)];

3. Accreditation Denied;

4. Conditionally Accredited;

5. ~~Accreditation Withheld/Improving School Near Accreditation (rating shall not be awarded after academic year ending in 2007, based on tests administered in 2005-2006).~~ Provisionally Accredited-Graduation Rate.

B. Compliance with the student academic achievement expectations shall be documented to the board directly through the reporting of the results of student performance on SOL tests and other alternative means of assessing student academic achievement as outlined in 8VAC20-131-110. [To facilitate accurate reporting of the graduation and completion index, the State Testing Identifier (STI) for students who transfer into a Virginia public school from another Virginia public school shall be retained by the receiving school.] Compliance with other provisions of these regulations will be documented in accordance with procedures prescribed by the Board of Education.

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

1. Fully accredited.

~~a. With tests administered in the academic year 2005-2006 for the accreditation ratings awarded for academic year 2006-2007, a school will be rated Fully Accredited when its eligible students meet the pass rate of 70% in each of the four core academic areas, except the pass rates required shall be 75% in third grade and fifth grade English and 50% in third-grade science and history/social science.~~

~~b.~~ a. With tests administered in the academic years 2006-2007, 2007-2008, [~~and~~] 2008-2009 [, and 2009-2010] for the accreditation ratings awarded for academic years 2007-2008, 2008-2009, [~~and~~] 2009-2010 [, and 2010-2011] respectively, a school will be rated Fully Accredited when its eligible students meet the pass rate of 70% in each of the four core academic areas except, the pass rates required shall be 75% in third-grade

through fifth-grade English and 50% in third-grade science and history/social science.

~~c.~~ b. For schools housing grade configurations where multiple pass rates apply, the results of the tests may be combined in each of the four core academic areas for the purpose of calculating the school's accreditation rating provided the school chooses to meet the higher pass rate.

~~d.~~ c. With tests administered beginning in the academic year ~~2009-10~~ [~~2009-2010~~ 2010-2011] for the accreditation ratings awarded for school year ~~2010-11~~ [~~2010-2011~~ 2011-2012] and beyond, a school will be rated Fully Accredited when its eligible students meet the pass rate of 75% in English and the pass rate of 70% in mathematics, science, and history and social science. Additionally, each school with a graduating class shall achieve a minimum of [~~80~~ 85] percentage points on the Board of Education's graduation and completion index, as described in 8VAC20-131-280 B 2, to be rated Fully Accredited.

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

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

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

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

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

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

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

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

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

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

5. Provisionally Accredited-Graduation Rate. With tests administered in the academic years [~~2009-2010.~~] 2010-2011, 2011-2012, 2012-2013, 2013-2014 [, 2014-2015] for the accreditation ratings awarded for academic years [~~2010-2011,~~] 2011-2012, 2012-2013, 2013-2014, [~~and~~] 2014-2015 [, and 2015-2016] respectively, a school will be rated Provisionally Accredited [-Graduation Rate] when its eligible students meet SOL pass rates to be rated Fully Accredited but fails to achieve a minimum of [~~80~~ 85] percentage index points on the Board of Education's graduation and completion index, but achieve the following minimum benchmarks for each year:

Graduation and Completion Index Benchmarks for Provisionally Accredited Ratings		
Academic Year	Accreditation Year	Index Percentage Points
[~~2009-2010~~ 2010-2011]	[~~2010-2011~~ 2011-2012]	[~~75~~ 80]
[~~2010-2011~~ 2011-2012]	[~~2011-2012~~ 2012-2013]	[~~76~~ 81]
[~~2011-2012~~ 2012-2013]	[~~2012-2013~~ 2013-2014]	[~~77~~ 82]
[~~2012-2013~~ 2013-2014]	[~~2013-2014~~ 2014-2015]	[~~78~~ 83]
[~~2013-2014~~ 2014-2015]	[~~2014-2015~~ 2015-2016]	[~~79~~ 84]

The last year in which this rating shall be awarded is the [~~2014-2015~~ 2015-2016] accreditation year, based on tests administered in the [~~2013-2014~~ 2014-2015] academic year.

[8VAC20-131-310. Action requirements for schools that are Accredited with Warning or ~~Accreditation Withheld/Improving School Near Accreditation~~ Provisionally Accredited-Graduation Rate.

A. With such funds as are appropriated by the General Assembly, the Department of Education shall develop a school academic review process and monitoring plan designed to assist schools rated as Accredited with Warning. All procedures and operations for the academic review process shall be approved and adopted by the board.

Schools rated Accredited with Warning or ~~Accreditation Withheld/Improving School Near Accreditation~~ Provisionally Accredited-Graduation Rate must undergo an academic review in accordance with guidelines adopted by the board and prepare a school improvement plan as required by subsection F of this section.

B. Any school that is rated Accredited with Warning in English or mathematics shall adopt a research-based instructional intervention that has a proven track record of success at raising student achievement in those areas as appropriate.

C. The superintendent and principal shall certify in writing to the Board of Education that such an intervention has been adopted and implemented.

D. The board shall publish a list of recommended instructional interventions, which may be amended from time to time.

E. Adoption of instructional interventions referenced in subsections B and D of this section shall be funded by eligible local, state, and federal funds.

F. A three-year School Improvement Plan must be developed and implemented, based on the results of an academic review of each school that is rated Accredited with Warning or ~~Accreditation Withheld/Improving School Near Accreditation~~ Provisionally Accredited-Graduation Rate upon receipt of notification of the awarding of this rating and receipt of the results of the academic review. The plan:

1. Shall be developed with the assistance of parents and teachers and made available to the public;

2. Must include the components outlined in subsection G of this section; and

3. Must be approved by the division superintendent and the local school board and be designed to assist the school in meeting the student achievement standard to be Fully Accredited as outlined in 8VAC20-131-300.

G. The improvement plan shall include the following:

1. A description of how the school will meet the requirements to be Fully Accredited, for each of the years covered by the plan;

2. Specific measures for achieving and documenting student academic improvement;

3. A description of the amount of time in the school day devoted to instruction in the core academic areas;

4. Instructional practices designed to remediate students who have not been successful on SOL tests;

5. Intervention strategies designed to prevent further declines in student performance and graduation rates;

6. Staff development needed;

7. Strategies to involve and assist parents in raising their child's academic performance;

8. The need for flexibility or waivers to state or local regulations to meet the objectives of the plan; and

9. A description of the manner in which local, state, and federal funds are used to support the implementation of the components of this plan.

As part of its approval of the school improvement plan, the board may grant a local school board a waiver from the requirements of any regulations promulgated by the board when such a waiver is available.

H. The school improvement plan and related annual reports submitted to the board shall provide documentation of the continuous efforts of the school to achieve the requirements to become rated Fully Accredited. The board shall adopt and approve all policies and formats for the submission of annual

reports under this section. The reports shall be due no later than October 1 of the school year.]

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

A. Schools [and divisions] may be recognized by the Board of Education in accordance with guidelines it shall establish [for the Virginia Index of Performance (VIP) incentive program]. Such recognition may include:

1. Public announcements recognizing individual schools and divisions;

2. Tangible rewards;

3. Waivers of certain board regulations;

4. Exemptions from certain reporting requirements; or

5. Other commendations deemed appropriate to recognize high achievement.

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

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

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

8VAC20-131-360. Effective date.

[The provisions in 8VAC20-131-30 B relating to double testing and the provisions in 8VAC20-131-60 C relating to Virtual Virginia shall become effective July 31, 2009.] Unless otherwise specified, [the remainder of] these regulations shall be effective [~~for~~ beginning with] the ~~2006-2007~~ [~~2009-2010~~ 2010-2011] academic year.

VA.R. Doc. No. R07-228; Filed June 3, 2009, 10:52 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Proposed Regulation

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

Title of Regulation: **9VAC25-630. Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management (amending 9VAC25-630-10 through 9VAC25-630-60; adding 9VAC25-630-70, 9VAC25-630-80).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Public Hearing Information:

July 29, 2009 - 7:30 p.m. - Department of Environmental Quality, Piedmont Regional Office, Training Room, 4949-A Cox Road, Glen Allen, VA

July 31, 2009 - 5 p.m. - Nandua High School, Auditorium, 26350 Lankford Highway, Onley, VA

August 6, 2009 - 7:30 p.m. - Lucy Simms Continuing Education Center, Auditorium, 620 Simms Avenue, Harrisonburg, VA

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

Agency Contact: Betsy Bowles, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4116, or email bkbowles@deq.virginia.gov.

Summary:

The State Water Control Board is considering amending the existing Virginia Pollution Abatement (VPA) Permit Regulation for Poultry Waste Management in order to establish requirements for end-users of poultry waste to ensure that poultry waste is being used in a manner in

which state waters are being protected and nutrient losses are being reduced and that these reductions can be measured. The proposed amendments include provisions regarding transferred offsite poultry waste used for land application by an entity other than the poultry grower. These provisions will establish end-user requirements such as land application recordkeeping, poultry waste storage, land application timing and rates, and land application buffer requirements. These provisions will also include the option of coverage under a general permit for a poultry waste end-user or poultry waste broker if noncompliance with the requirements of the proposed technical regulations found in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 is determined.

Concerns have been expressed by the public, legislature, and executive branch that additional safeguards are necessary to ensure that poultry waste leaving the site and control of the permitted confined poultry feeding operations for land application is managed, applied, and stored in a manner that is protective of water quality.

Currently, the VPA General Permit Regulations for Poultry Waste Management (9VAC25-630) require that poultry waste applied on lands owned by the permitted owner/operator of a confined poultry feeding operation be done in accordance with a nutrient management plan written by a planner certified by the Virginia Department of Conservation and Recreation (DCR). Permitted operations are inspected annually to ensure that poultry waste is stored, applied, and otherwise managed according to the regulations.

However, under the current regulations, poultry waste transferred offsite is only required to be accompanied by waste analysis information and a fact sheet (developed by DEQ and DCR) that provides the recipient with general provisions regarding the storage, management, and application of the poultry waste. The end-user must acknowledge receipt of the fact sheet by signing a separate "Poultry Waste Transfer Records" sheet. Maintenance of records, including the date and amount of the transfer, zip code of the location receiving the offsite poultry waste, and nearest stream or waterbody, is the requirement of the owner/operator of the confined poultry feeding operation (or third-part broker if one was involved in the transaction). Records must be made available to DEQ personnel upon inspection of the confined poultry feeding operation. For offsite application of poultry waste, the present regulation does not require records of (i) the amount of waste received by a single farm, (ii) whether or not the poultry waste will be applied in accordance with a nutrient management plan, (iii) soil test levels on receiving fields, (iv) timing of applications, or (v) a description of receiving crops.

9VAC25-630-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Agricultural storm water" means storm water that is not the sole result of land application of manure, litter or process wastewater. Where manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of an animal feeding operation or under the control of a poultry waste end-user or poultry waste broker is an agricultural storm water discharge.

"Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where both of the following conditions are met:

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purpose of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Confined animal feeding operation," for the purposes of this regulation, has the same meaning as an "animal feeding operation."

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys. These numbers are established regardless of animal age or sex.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or his designee.

"Fact sheet" means the document that details the requirements regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers. The fact sheet is approved by the department, in

consultation with the Department of Conservation and Recreation.

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters.

"Organic source" means any nutrient source including, but not limited to, manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife.

"Permittee" means the poultry grower ~~whose confined poultry feeding operation is~~, poultry waste end-user, or poultry waste broker whose poultry waste management activities are covered under the general permit.

"Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation.

"Poultry waste" means dry poultry litter and composted dead poultry.

"Poultry waste broker" or "broker" means a person~~, other than the poultry grower,~~ who possesses ~~more than 10 tons of~~ or controls poultry waste ~~in any 365 day period~~ that is not generated on an animal feeding operation under their operational control and who transfers ~~some or all of the~~ or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation.

"Poultry waste end-user" or "end-user" means any recipient of transferred poultry waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control.

"Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another, and is not otherwise involved in the transfer or transaction of the waste, nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping and reporting remains with the entities to which the service was provided: grower, broker, and end-user.

"Standard rate" means a land application rate for poultry waste approved by the board as specified in this regulation.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

9VAC25-630-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs the management of poultry waste at confined poultry feeding operations not covered by a Virginia Pollution Discharge Elimination System (VPDES) permit and poultry waste utilized or stored by poultry waste end-users or poultry waste brokers. It establishes requirements for proper nutrient management, waste storage, and waste tracking and accounting of poultry waste.

B. The Director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on December 1, 2000. This general permit will expire 10 years from the effective date.

9VAC25-630-30. Authorization to manage pollutants.

A. Poultry grower. Any poultry grower governed by this general permit is hereby authorized to manage pollutants at confined poultry feeding operations provided that the poultry grower files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and provided that:

1. The poultry grower has not been required to obtain a Virginia Pollution Discharge Elimination System (VPDES) permit or an individual permit according to 9VAC25-32-260 B;

2. The activities of the confined poultry feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

3. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit by a permittee for routine disposal of daily poultry mortalities shall be considered a violation of this permit. This prohibition shall not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to ~~§ 3.1-726~~ § 3.2-6002 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia;

4. The Department of Conservation and Recreation must approve a nutrient management plan for the confined poultry feeding operation prior to the submittal of the registration statement. The poultry grower shall attach to the registration statement a copy of the approved nutrient

management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan, and if the plan was written after December 31, 2005, that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry grower shall implement the approved nutrient management plan;

5. Adjoining property notification.

a. When a poultry grower files a general permit registration statement for a confined poultry feeding operation that proposes construction of poultry growing houses after December 1, 2000, the poultry grower shall also give notice to all owners or residents of property that adjoins the property on which the proposed confined poultry feeding operation will be located. Such notice shall include (i) the types and maximum number of poultry which will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted.

b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and received by the poultry grower not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement; and

6. Each poultry grower covered by this general permit shall complete ~~the~~ a training program offered or approved by the ~~Department of Conservation and Recreation~~ department within one year of filing the registration statement for general permit coverage. All poultry growers shall complete a training program at least once every five years.

B. Poultry waste end-user, poultry waste broker. Any poultry waste end-user or poultry waste broker who receives transferred poultry waste shall comply with the requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 regarding utilization, storage, tracking, and accounting of poultry waste in his possession or under his control.

1. Any poultry waste end-user or poultry waste broker who does not comply with the requirements of 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 may be required to obtain coverage under the general permit.

2. Any poultry waste end-user or poultry waste broker governed by this general permit is hereby authorized to manage pollutants relating to the utilization and storage of poultry waste provided that the poultry waste end-user or poultry waste broker files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and provided that:

a. The poultry waste end-user or poultry waste broker has not been required to obtain a Virginia Pollution Abatement individual permit according to subdivision 2 b of 9VAC25-32-260;

b. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

c. The Department of Conservation and Recreation must approve a nutrient management plan for land application sites where poultry waste will be utilized or stored and managed by the poultry waste end-user or the poultry waste broker prior to the submittal of the registration statement. The poultry waste end-user or the poultry waste broker shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan, and if the plan was written after December 31, 2005, that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry waste end-user or the poultry waste broker shall implement the approved nutrient management plan; and

d. Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted end-users or permitted brokers shall complete a training program at least once every five years.

~~B.~~ C. Receipt of this general permit does not relieve any poultry grower, poultry waste end-user, or poultry waste broker of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

9VAC25-630-40. Registration statement.

A. Poultry growers. In order to be covered under the general permit, the poultry grower shall file a complete VPA General Permit Registration Statement. The registration statement shall contain the following information:

1. The poultry grower's name, mailing address and telephone number;

2. The location of the confined poultry feeding operation;

3. The name and telephone number of a contact person or operator other than the poultry grower, if necessary;

4. The best time of day and day of the week to contact the poultry grower or contact person;

5. If the facility has an existing VPA permit, the permit number;

6. The types of poultry and the maximum numbers of each type to be grown at the facility at any one time;

7. Identification of the method of dead bird disposal;

8. An indication of whether new poultry growing houses are under construction or planned for construction;

9. A copy of the nutrient management plan approved by the Department of Conservation and Recreation ~~and a~~ ;

10. A copy of the Department of Conservation and Recreation nutrient management plan approval letter ~~certifying approval of the plan;~~ , which also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

~~10.~~ 11. The following certification: "I certify that notice of the registration statement for any confined poultry feeding operation that proposes construction of poultry growing houses after December 1, 2000, has been given to all owners or residents of property that adjoins the property on which the confined poultry feeding operation will be located. This notice included the types and numbers of poultry which will be grown at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

B. Poultry waste end-users or poultry waste brokers. In order to be covered under the general permit, the poultry waste end-user or poultry waste broker shall file a complete VPA General Permit Registration Statement. The registration statement shall contain the following information:

1. The poultry waste end-user's or poultry waste broker's name, mailing address, and telephone number;

2. The location of the operation where the poultry waste will be utilized, stored, or managed;

3. The best time of day and day of the week to contact the poultry waste end-user or poultry waste broker;

4. If the facility has an existing VPA permit, the permit number;

5. If confined poultry are located at the facility, indicate the number of confined poultry;

6. A copy of the nutrient management plan approved by the Department of Conservation and Recreation;

7. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

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

~~B.~~ C. The registration statement shall be signed in accordance with 9VAC25-32-50.

9VAC25-630-50. Contents of the general permit.

Any poultry grower, poultry waste end-user, or poultry waste broker whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPA Permit Regulation, 9VAC25-32.

General Permit No. VPG2

Effective Date: December 1, 2000

Modification Date: January 1, 2006

Expiration Date: November 30, 2010

GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT ~~AT CONFINED POULTRY FEEDING OPERATIONS~~

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of confined poultry feeding operations having 200 or more animal units, poultry waste end-users, and poultry waste brokers are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations or policies prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement and supporting documents submitted to the Department of Environmental Quality, this cover page, and Part I—Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations and Part II—Conditions Applicable to All VPA Permits and Part III—Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Waste Brokers, as set forth herein.

Part I

Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.

2. If poultry waste is land applied, it shall be applied at the rates specified in the facility's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite

Moisture Content	NL	%	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

5. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

6. All monitoring data required by Part I A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. The confined poultry feeding operation shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste; and

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second).

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless the poultry grower has no land outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. New, expanded or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures.

4. Poultry waste may be transferred from a permitted poultry grower to another person ~~or broker~~ without ~~the requirement for the identification of~~ identifying the fields where such waste~~.~~ will be ~~applied~~ utilized in the ~~facility's~~ permitted poultry grower's approved nutrient management plan if the following conditions are met:

a. When a poultry grower transfers to another person ~~more than 10~~ five or more tons of poultry waste in any 365-day period, the poultry grower shall provide that person ~~a~~ with:

(1) Grower name, address, and permit number;

(2) A copy of the most recent nutrient analysis ~~for~~ of the poultry waste; and ~~a~~

(3) A fact sheet ~~approved by the department, in consultation with the Department of Conservation and Recreation, that includes appropriate practices for proper storage and management of the waste. The person or broker receiving the waste shall provide the poultry grower:~~.

~~(1) His name and address,~~

~~(2) Written acknowledgement of receipt of the waste,~~

~~(3) The nutrient analysis of the waste, and~~

~~(4) The fact sheet.~~

~~If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.~~

b. When a poultry grower transfers to another person ~~more than 10~~ five or more tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

(1) The recipient name and address;

~~(1)~~ (2) The amount of poultry waste received by the person~~,~~;

~~(2)~~ (3) The date of the transaction~~,~~;

~~(3)~~ (4) The nutrient analysis of the waste~~,~~; and

~~(4) The locality in which the recipient intends to utilize the waste (i.e. nearest town or city and zip code),~~

~~(5) The name of the stream or waterbody known to the recipient that is nearest to the waste utilization site, and~~

~~(6)~~ (5) The signed waste transfer ~~acknowledgement.~~ records form acknowledging the receipt of the following:

(a) The waste;

(b) The nutrient analysis of the waste; and

(c) A fact sheet.

~~These records shall be maintained on site for three years after the transaction and shall be made available to department personnel upon request.~~

~~e. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.~~

c. When a poultry grower transfers to another person five or more tons of poultry waste in any 365-day period, and the recipient of the waste is someone other than a broker, the poultry grower shall keep a record of the following:

(1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code);

(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site; and

(3) If the waste is utilized for land application, if known indicate the method used to determine the land application rates (i.e., phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan).

d. Poultry growers shall submit copies of the records required by Part I B 4 a, b, and c to the department annually, on a form approved by the department. Records for the preceding calendar year shall be submitted to the department not later than February 15. Poultry growers shall maintain the records required by Part I B 4 a, b, and c for at least three years after the transaction and shall make them available to department personnel upon request.

e. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

5. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be considered a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to ~~§ 3.1-726~~ § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

6. The poultry grower shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation and maintain the plan on site. All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste generated by this facility will be applied by the poultry grower. The location of fields as identified in Part I ~~subdivision~~ B 4 ~~e~~ e shall also be included;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements for the grower's poultry waste management activities;

e. Calculation of waste application rates; and

f. Waste application schedules.

7. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without

permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

8. Nitrogen application rates contained in the NMP shall not exceed crop nutrient needs as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

9. For all NMPs developed after October 1, 2001, and on or before December 31, 2005, phosphorus application rates shall not exceed the greater of crop nutrient needs or crop nutrient removal as determined by the Department of Conservation and Recreation. For all NMPs developed after December 31, 2005, phosphorus application rates shall conform solely to the Department of Conservation and Recreation's regulatory criteria and standards in effect at the time the NMP is written. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

10. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

11. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists).

Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer.

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

12. ~~Records~~ The following records shall be maintained ~~to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted.~~:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

13. Each poultry grower covered by this general permit shall complete ~~the~~ a training program offered or approved by the ~~Department of Conservation and Recreation~~ department within one year of filing the registration statement ~~has been submitted~~ for general permit coverage. All poultry growers shall complete a training program at least once every five years.

Part II

Conditions Applicable to all VPA Permits

A. Monitoring.

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

2. Monitoring shall be conducted according to procedures listed under 40 CFR Part 136 unless other procedures have been specified in this permit.

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

B. Records.

1. Records of monitoring information shall include:

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

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

c. The date(s) analyses were performed;

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

e. The analytical techniques or methods used, with supporting information such as observations, readings, calculations and bench data; and

f. The results of such analyses.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit for a period of at least three years from the date of the sample, measurement, report or application. This period of retention may be extended by request of the board at any time.

C. Reporting monitoring results.

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

2. Monitoring results shall be reported on forms provided or specified by the department.

3. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant more frequently than required by the permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

4. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant that is not required to be monitored by the permit, and uses approved analytical methods, the permittee shall report the results with the monitoring report.

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

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as requested by the board prior to commencing construction.

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

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

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

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

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

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

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

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

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

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the

incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

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

2. Breakdown of processing or accessory equipment;

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

4. Flooding or other acts of nature.

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

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

a. Any unanticipated bypass; and

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

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

a. A description of the noncompliance and its cause;

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

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

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

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

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

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the design or operation of the pollutant management activity.

2. The permittee shall give at least 10 days advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Applications. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

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

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

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

c. The written authorization is submitted to the department.

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

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

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

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

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

Q. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.

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

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

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

U. Bypass.

1. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of a treatment works. A bypass of the treatment works is prohibited except as provided herein.

2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects, the board may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. "Severe property damage" does not mean economic loss caused by delays in production; and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in paragraphs U 2 a and b and in light of the information reasonably available to the permittee at the time of the bypass.

V. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. That the 24-hour reporting requirements to the department were met; and

4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the permit.

W. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private and have access to records required by this permit;

2. Have access to, inspect and copy any records that must be kept as part of permit conditions;

3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the permit; and

4. Sample or monitor any substances or parameters at any locations for the purpose of assuring permit compliance or as otherwise authorized by the State Water Control Law.

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

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause upon the request of the permittee or interested persons, or upon the board's initiative. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VPA permit.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such other requirements as may be necessary. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new owner or operator.

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

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

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

c. The board does not, within the 30-day time period, notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit.

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

Part III

Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Brokers

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to

manage pollutants at the location or locations identified in the registration statement and the permittee's approved nutrient management plan.

2. If poultry waste is land applied on land under the permittee's operational control, it shall be applied at the rates specified in the permittee's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the permittee's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the permittee's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
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Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

5. If waste from two or more poultry waste sources is commingled or stored then a sample that best represents the waste shall be used to calculate the nutrients available in the poultry waste for land application and shall be provided to the end-user of the waste.

6. Analysis of soil and waste shall be according to methods specified in the permittee's approved nutrient management plan.

7. All monitoring data required by Part III A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. Poultry waste storage facilities shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the approved nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste

that is stockpiled outside for more than 14 days shall be kept in a facility that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste; and

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10-6 centimeters per second).

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures.

4. When a poultry waste end-user or poultry waste broker receives, possesses, or has control over five or more tons of transferred poultry waste in any 365-day period, he shall provide the person from whom he received the poultry waste with:

a. The end-user or broker name, address, and permit number;

b. If the recipient of the poultry waste is an end-user, then he shall also provide the person from whom he received the poultry waste the following information:

(1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code);

(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site;

c. Written acknowledgement of receipt of:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) The fact sheet.

If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.

5. When a poultry waste broker transfers or hauls poultry waste to other persons, he shall provide the person who received the poultry waste with:

a. Broker name, address, and permit number;

b. The nutrient analysis of the waste; and

c. A fact sheet.

6. When a poultry waste end-user or poultry waste broker is a recipient of five or more tons of transferred poultry waste in any 365-day period, the poultry waste end-user or poultry waste broker shall keep a record regarding the transferred poultry waste:

a. The following items shall be recorded regarding the source of the transferred poultry waste:

(1) The source name and address;

(2) The amount of poultry waste received from the source; and

(3) The date the poultry waste was acquired.

b. The following items shall be recorded regarding the recipient of the transferred poultry waste:

(1) The recipient name and address;

(2) The amount of poultry waste received by the person;

(3) The date of the transaction;

(4) The nutrient content of the waste;

(5) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code);

(6) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site;

(7) If the waste is utilized for land application, if known indicate the method used to determine the land application rates (i.e., phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan); and

(8) The signed waste transfer records form acknowledging the receipt of the following:

(a) The waste;

(b) The nutrient analysis of the waste; and

(c) A fact sheet.

7. End-users or brokers shall submit copies of the records required by Part III B 6 to the department annually on a form approved by the department. Records for the preceding calendar year shall be submitted to the department not later than February 15. End-users or brokers shall maintain the records required by Part III B 6 for at least three years after the transaction and make them available to department personnel upon request.

8. If poultry waste is also generated by this facility it shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the permittee's approved nutrient management plan.

9. Poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be considered a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

10. The permittee shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation and maintain the plan on site. All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied by the permittee. The location of fields as identified in Part III B 8 shall also be included;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements for the permittee's poultry waste management activities;

e. Calculation of waste application rates; and

f. Waste application schedules.

11. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

12. Nitrogen application rates contained in the NMP shall not exceed crop nutrient needs as determined by the Department of Conservation and Recreation. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

13. Phosphorus application rates shall conform solely to the Department of Conservation and Recreation's regulatory criteria and standards in effect at the time the NMP is written. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

14. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice- or snow-covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

15. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

16. The following records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

17. Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All poultry waste end-users or poultry waste brokers shall complete a training program at least once every five years.

9VAC25-630-60. Tracking and accounting requirements for poultry waste brokers.

A. Poultry waste brokers shall ~~keep a record of the source of the poultry waste in their possession, the amount of poultry waste received from the source, and the date the poultry waste was acquired~~ register with the department by providing their name and address on a form approved by the department prior to transferring poultry waste.

B. When a poultry waste broker transfers to another person ~~more than 10~~ five or more tons of poultry waste in any 365-day period, the poultry waste broker shall provide ~~to the recipient of the waste copies of the most recent nutrient analysis for the poultry waste and a fact sheet approved by the department that includes appropriate practices for proper storage and management of the waste. The person receiving the waste shall provide the poultry waste broker his name and address and acknowledge in writing receipt of the waste, the nutrient analysis and the fact sheet.~~ information regarding the transfer of poultry waste to both the source and recipient of the waste.

1. The broker name and address shall be provided to the source of the transferred poultry waste:

2. The following items shall be provided to the recipient of the transferred poultry waste:

a. The broker name and address;

b. The most recent nutrient analysis of the poultry waste; and

c. A fact sheet.

C. When a poultry waste broker transfers to another person ~~more than 10~~ five or more tons of poultry waste in any 365-day period, the poultry waste broker shall keep ~~a record of the amount of poultry waste received by the person, the date of the transaction, the nutrient content of the waste, the locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code), the name of the stream or waterbody known to the recipient that is nearest to the waste utilization site, and the signed waste transfer acknowledgement~~ records regarding the transferred poultry waste.

1. The following items shall be recorded regarding the source of the transferred poultry waste:

a. The source name and address;

b. The amount of the poultry waste received from the source; and

c. The date the poultry waste was acquired.

2. The following items shall be recorded regarding the recipient of the transferred poultry waste:

a. The recipient name and address;

b. The amount of poultry waste received by the person;

c. The date of the transaction;

d. The nutrient content of the waste;

e. The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code);

f. The name of the stream of waterbody if known to the recipient that is nearest to the waste utilization or storage site;

g. If the waste is utilized for land application, if known indicate the method used to determine the land application rates (i.e., phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan); and

h. The signed waste transfer records form acknowledging the receipt of the following:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) A fact sheet.

D. Poultry waste brokers shall submit copies of the records required by ~~subsections A and~~ subsection C of this section, ~~except the waste transfer acknowledgement,~~ to the department annually using a form approved by the department. Records for the preceding calendar year shall be

submitted to the department not later than February 15. Poultry waste brokers shall maintain the records required by ~~subsections A and~~ subsection C of this section for at least three years and make them available to department personnel upon request.

E. If waste from two or more poultry waste sources is commingled or stored then a sample that best represents the waste shall be used to calculate the nutrients available in the poultry waste for land application and shall be provided to the end-user of the waste.

F. If the poultry waste broker land applies the poultry waste for the end-user then the broker shall provide the end-user with the records regarding land application as required by 9VAC25-630-70.

G. Poultry waste brokers shall complete a training program offered or approved by the department within one year of registering with the department. Poultry waste brokers shall complete a training program at least once every five years.

H. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

9VAC25-630-70. Tracking and accounting requirements for poultry waste end-users.

A. When a poultry waste end-user is the recipient of five or more tons of poultry waste in any 365-day period, the end-user shall maintain records regarding the transfer and land application of poultry waste.

1. The poultry waste end-user shall provide the permitted poultry grower or poultry waste broker with the following items:

a. End-user name and address;

b. The locality in which the end-user intends to utilize the waste (i.e., nearest town or city and zip code);

c. The name of the stream or waterbody if known to the end-user that is nearest to the waste utilization or storage site;

d. If the waste is utilized for land application, if known indicate the method used to determine the land application rates (i.e., phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan); and

e. Written acknowledgement of receipt of:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) A fact sheet.

2. The poultry waste end-user shall record the following items regarding the waste transfer:

a. The source name, address, and permit number (if applicable);

b. The amount of poultry waste that was received;

c. The date of the transaction;

d. The final use of the poultry waste;

e. The locality in which the waste was utilized (i.e., nearest town or city and zip code); and

f. The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.

Records regarding poultry waste transfers shall be maintained on site for a period of three years after the transaction. All records shall be made available to department personnel upon request.

3. If waste is land applied, the poultry waste end-user shall keep a record of the following items regarding the land application of the waste:

a. The nutrient analysis of the waste;

b. Maps indicating the poultry waste land application fields and storage sites;

c. The land application rate;

d. The land application dates;

e. What crops were planted;

f. Soil test results, if obtained;

g. NMP, if applicable; and

h. The method used to determine the land application rates (i.e., phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan).

Records regarding land application of poultry waste shall be maintained on site for a period of three years after the recorded application is made. All records shall be made available to department personnel upon request.

B. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

9VAC25-630-80. Utilization and storage requirements for transferred poultry waste.

A. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in the following sections.

B. Storage requirements. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in this section regarding storage of poultry waste in their possession or under their control.

1. Poultry waste shall be stored in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10-6 centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

2. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures.

C. Land application requirements. Any poultry waste end-user or poultry waste broker who (i) receives five or more tons of poultry waste in any 365-day period and (ii) land applies poultry waste shall follow appropriate land application requirements as outlined in this section. The application of poultry waste shall be managed to minimize adverse water quality impacts.

1. The maximum application rates can be established by the following methods:

a. Phosphorus crop removal application rates can be used when:

(1) Soil test phosphorus levels do not exceed the values listed in the table below:

Region	Soil test P (ppm) VPI & SU Soil test (Mehlich I) *
Eastern Shore and Lower Coastal Plain	135
Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162
* If results are from another laboratory the Department of Conservation and Recreation approved conversion factors must be used.	

(2) The phosphorus crop removal application rates are set forth by regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia.

b. Poultry waste may be applied to any crop at the standard rate of 1.5 tons per acre once every three years when:

(1) In the absence of current soil sample analyses and recommendations; and

(2) Nutrients have not been supplied by an organic source, other than pastured animals, to the proposed land application sites within the previous three years of the proposed land application date of poultry waste.

c. Soil test recommendations can be used when:

(1) Accompanied by analysis results for soil tests that have been obtained from the proposed field or fields in the last three years;

(2) Provided by a laboratory whose procedures and recommendations are approved by the Department of Conservation and Recreation; and

(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops listed on the soil test recommendation.

d. A nutrient management plan developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

2. The timing of land application of poultry waste shall be appropriate for the crop, and in accordance with

regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia, except that no waste may be applied to ice- or snow-covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

3. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

D. Poultry waste end-users or poultry waste brokers shall maintain the records demonstrating compliance with the requirements of Part III A through C for at least three years and make them available to department personnel upon request.

E. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

F. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

FORMS (9VAC25-630)

Registration Statement, VPA General Permit for Poultry Waste Management for Poultry Growers, RS ~~VPS2 (rev. 12/1/00)~~ VPG2 (rev. 12/09).

Registration Statement, VPA General Permit for Poultry Waste Management for Poultry Waste End-Users and Brokers, RS VPG2 (rev. 12/09).

VA.R. Doc. No. R08-1062; Filed June 2, 2009, 4:24 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Fast-Track Regulation

Title of Regulation: **12VAC5-481. Virginia Radiation Protection Regulations (amending 12VAC5-481-451).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on July 22, 2009.

Effective Date: August 6, 2009.

Agency Contact: Mike Welling, Director, Radioactive Materials Program, Department of Health, 109 Governor St., 7th Floor, Richmond, VA 23219, telephone (804) 864-8168, or email mike.welling@vdh.virginia.gov.

Basis: Section 32.1-229 of the Code of Virginia authorizes the Board of Health to establish (i) a program of effective regulation of sources of radiation for the protection of the public health and safety; (ii) a program to promote the orderly regulation of radiation within the Commonwealth, among the states and between the federal government and the Commonwealth and to facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized; and (iii) a program to permit maximum utilization of sources of radiation consistent with the public health and safety.

Purpose: The U.S. Nuclear Regulatory Commission (NRC) submitted a comment to this agency stating: "Virginia needs to add that the licensee must also call the NRC Headquarters Operations Center at 301-816-5100 to 12VAC5-481-451 (B)(2)(d), (B)(3)(a) 5 and (C)(6)."

The NRC also revised the division name and address for submitting fingerprint records.

The purpose of the regulation is to make the fingerprinting requirement more visible and help assure the public that

government is making an effort to prevent terrorists from obtaining radioactive materials for their activities.

Rationale for Using Fast-Track Process: To ensure continuity of regulatory activity, the NRC will require VDH to implement the December 5, 2007, NRC Order on the date of signing the state agreement with the NRC for the transfer of authority for regulating radioactive materials, set for March 31, 2009. This deadline cannot be met through the normal regulatory process that requires about two years to complete the adoption of a regulation. The fast-track approach will reduce implementation to less than a year and allow the regulation to be in place on the date transfer of authority is projected to take place.

The regulation should be noncontroversial, since it was previously approved with no objections.

If there is an objection to the fast-track process, VDH will wait until the next revision of 12VAC5-481. We will also include the NRC notification requirement as a license condition.

Substance: This revision includes the NRC Headquarters Operation Office's phone number in three subsections. The NRC needs to be contacted along with this agency under certain situations. Also, the division name and address has changed for where licensees must submit their fingerprint records.

Issues: Primary advantages and disadvantages to the public: The primary advantage to the public is that the fingerprinting requirement is more visible as a regulation than an order issued to specific radioactive material licensees and thus the public is assured that government is making an effort to prevent terrorists from obtaining radioactive materials for their activities.

There are no disadvantages to the public in promulgating the proposed regulation.

Primary advantages and disadvantages to the agency and Commonwealth: Approving the amendment will address NRC's comment ensuring the regulation is compatible and adequate to NRC when the Commonwealth signs an agreement with the NRC for this activity.

There are no disadvantages to the agency and the Commonwealth in promulgating the proposed regulation.

The NRC has implemented the requirements in the proposed regulation by an Order issued on December 5, 2007, and required compliance by June 2, 2008. VDH will need to have these requirements in place on date of agreement with the NRC.

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

Summary of the Proposed Amendments to Regulation. On March 31, 2009 the Virginia Department of Health (VDH) entered into an agreement with the U.S. Nuclear Regulatory Commission (NRC) for assuming regulatory authority of NRC's licensees located in Virginia. VDH is required to implement federal regulations and orders applicable to radioactive material licensees. Pursuant to NRC rules, VDH proposes to require in these regulations that licensees call NRC: 1) when instances of theft, sabotage, or diversion of radioactive material or of the devices occur or are attempted, 2) when through the course of the investigation, it is determined the shipment has become lost, stolen, or missing, and 3) when the results from an FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base. These regulations require radioactive material licensees that have certain quantities of radioactive materials of concern to have individuals who have unrestricted access to these materials fingerprinted and their names compared with those on the national terrorist screening database.

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

Estimated Economic Impact. On November 10, 2008 the NRC submitted a comment to VDH stating that "Virginia needs to add that the licensee must also call the NRC Headquarters Operations Center at 301-816-5100 to 12VAC5-481-451 (B)(2)(d), (B)(2)(a) 5 and (C)(6)." Section 451 (B)(2)(d) states that "After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the agency at (804) 864-8150 during normal business hours and (804) 674-2400 after hours." Section 451 (B)(3)(a) 5 states that "When, through the course of the investigation, it is determined the shipment has become lost, stolen, or missing, the licensee shall immediately notify the agency at (804) 864-8150 during normal working hours and (804) 674-2400 after hours. If after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be determined missing and the licensee shall immediately notify the agency at (804) 864-8150 during normal working hours and (804) 674-2400 after hours." Section 451 (C)(6) states that "The licensee shall notify the agency at (804) 864-6168 within 24 hours if the results from an FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base."

According to VDH, calling and speaking to the NRC about incidences would most likely only involve one to five minutes of time. Also, there have been zero instances that would have necessitated such calling since the program started in 2007. Thus, the costs of the proposed new requirements are quite small. Given that the value for national security of NRC promptly becoming informed of such incidences is non-negligible, the benefits of the proposed changes exceed the costs.

Businesses and Entities Affected. The proposed amendments affect the 25 radioactive material licensees in the Commonwealth. About 12 qualify as small businesses.[1]

Localities Particularly Affected. The locations of licensees are not public information.

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

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

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

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

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

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

[1] Data source: Virginia Department of Health

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

Summary:

On March 31, 2009, the Virginia Department of Health (VDH) entered into an agreement with the U.S. Nuclear Regulatory Commission (NRC) for assuming regulatory authority of NRC's licensees located in Virginia. VDH is required to implement federal regulations and orders applicable to radioactive material licensees. Pursuant to NRC rules, the amendments require that licensees call NRC when (i) instances of theft, sabotage, or diversion of radioactive material or of the devices occur or are attempted; (ii) through the course of the investigation, it is determined the shipment has become lost, stolen, or missing; and (iii) the results from an FBI identification and criminal history records check indicate that an individual is identified on the FBI's terrorist screening database. These regulations require radioactive material licensees that have certain quantities of radioactive materials of concern to have individuals who have unrestricted access to these materials fingerprinted and their names compared with those on the national terrorist screening database.

12VAC5-481-451. Increased controls and fingerprinting.

A. Radionuclides of concern.

Radionuclide	Quantity of concern (TBq)[1,2]	Quantity of concern (Ci)[1,2]
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81

Combinations of radioactive materials listed above[3]	See footnote below[4]	

[1]The aggregate activity of multiple, collocated sources of the same radionuclides should be included when the total activity equals or exceeds the quantity of concern.

[2]The primary values used for compliance are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3]Radioactive materials are to be considered aggregated or collocated if breaching a common physical barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

[4]If several radionuclides are aggregated, the sum of the ratios of the activity of each source, i of radionuclide, n, A (i,n), to the quantity of concern for radionuclide n, Q_n, listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) / (quantities of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) / (quantities of concern for radionuclide B)] + etc…. ≥ 1.

B. The following increased controls apply to licensees who, at any given time, possess radioactive sources greater than or equal to the quantities of concern of radioactive material listed in subsection A of this section.

1. In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee shall control access at all times to radioactive material quantities of concern and devices containing such radioactive material (devices), and limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.

a. The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices. The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.

b. For individuals employed by the licensee for three years or less, and for nonlicensee personnel, such as physicians, physicists, housekeeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined at a minimum, by verifying employment history, education, personal references and fingerprinting and the review of an FBI identification and criminal history records check. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee and fingerprinting and an FBI identification and criminal history records check.

c. Service provider licensee employees shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the licensee providing the service.

d. The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive material quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.

2. In order to ensure the safe handling, use and control of licensed material in use and in storage, each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the limits in subsection A of this section.

a. The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a local law-enforcement agency (LLEA).

b. The licensee shall have a prearranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices that is consistent in scope and timing with a realistic potential vulnerability of the sources containing such radioactive material. The prearranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources. Prearranged LLEA coordination is not required for temporary job sites.

c. The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized

intrusion, to inform the assessor, and to summon the appropriate responder.

d. After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the agency at (804) 864-8150 during normal business hours and (804) 674-2400 after hours and the NRC HQ Operations Center at (301) 816-5100.

e. The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.

3. Transportation.

a. In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee, for quantities that equal or exceed those in subsection A of this section but are less than 100 times those in subsection A of this section, per consignment, the licensee shall:

(1) Use carriers that:

(a) Use package tracking systems,

(b) Implement methods to assure trustworthiness and reliability of drivers,

(c) Maintain constant control and/or surveillance during transit, and

(d) Have the capability for immediate communication to summon appropriate response or assistance.

(2) Verify and document that the carrier employs the measures listed in subdivision (1) above.

(3) Contact the recipient to coordinate the expected arrival time of the shipment.

(4) Confirm receipt of the shipment.

(5) Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or missing, the licensee shall immediately notify the agency at (804) 864-8150 during normal working hours and (804) 674-2400 after hours and the NRC HQ Operations Center at (301) 816-5100. If after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be determined missing and the licensee shall immediately notify the agency at (804) 864-8150 during normal working hours and (804) 674-2400 after hours and the NRC HQ Operations Center at (301) 816-5100.

b. For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in subsection A of this section per consignment, the licensee shall:

(1) Notify the NRC (Director, Office of Nuclear Material Safety and Safeguards, U.S. NRC, Washington, DC 20555), in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by the NRC.

(2) Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements of subdivision 1 of this subsection shall not apply to future shipments of licensed radioactive material that exceeds 100 times the quantities listed in subsection A of this section. The licensee shall implement the ASMs for the transportation of RAM QC.

c. If a licensee employs a Manufacturer/Distributor (M&D) licensee to take possession at the licensee's location of the licensed radioactive material and ship it under its M&D license, the requirements of subdivision a and b above shall not apply.

d. If the licensee is to receive radioactive material greater than or equal to the quantities listed in subsection A of this section, per consignment, the licensee shall coordinate with the originator to:

(1) Establish an expected time of delivery; and

(2) Confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originator and assist in any investigation.

4. In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee that possesses mobile or portable devices containing radioactive material in quantities greater than or equal to the limits in subsection A of this section shall:

a. For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

b. For mobile devices:

(1) That are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

(2) That are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.

c. For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.

5. The licensee shall retain documentation required by this section for three years after these increased controls are no longer effective.

a. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

b. Each time the licensee revises the list of approved persons required in subdivision 1 d of this subsection or the documented program required by subdivision B 2 of this section, the licensee shall retain the previous documentation for three years after the revision.

c. The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.

d. The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.

e. After the licensee is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by this section for three years.

6. Detailed information generated by the licensee that describes the physical protection of radioactive material quantities of concern is sensitive information and shall be protected from unauthorized disclosure.

a. The licensee shall control access to its physical protection information to those persons who have an established need to know the information and are considered to be trustworthy and reliable.

b. The licensee shall develop, maintain and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by this section. The policies and procedures shall include the following:

(1) General performance requirement that each person who produces, receives, or acquires the licensees sensitive information, protect the information from unauthorized disclosure;

(2) Protection of sensitive information during use, storage, and transit;

(3) Preparation, identification or marking, and transmission;

(4) Access controls;

(5) Destruction of documents;

(6) Use of automatic data processing systems; and

(7) Removal from the licensee's sensitive information category.

C. Fingerprinting.

1. Licensees who possess radionuclides in quantities greater than those listed in subsection A of this section shall establish and maintain a fingerprinting program that meets the following:

a. Each licensee subject to these provisions shall fingerprint each individual who is seeking unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in subsection A of this section. The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) identification and criminal history records check and ensure that the provisions in this subsection are satisfied;

b. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record as specified in subdivision 3 of this subsection;

c. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, or any person who has been favorably decided by a U.S. government program involving fingerprinting and an FBI identification and criminal history records check (e.g., National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program (Note 1: within the last five calendar years, or any person who has an active federal security clearance provided in the latter two cases that they make available

the appropriate documentation; Note 2: Written confirmation from the agency/employer that granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The licensee must retain this documentation for a period of three years from the date the individual no longer requires unescorted access to certain radioactive material associated with the licensee's activities.));

d. All fingerprints obtained by the licensee pursuant to this section must be submitted to the NRC ~~(Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program, Mail Stop T-6E46, Rockville, MD 20852)~~ (Office of Administration, Security Processing Unit, Mail Stop TWB-05 B32M, US NRC, Washington, DC 20555-0012) for transmission to the FBI. Additionally, the licensee shall submit a certification of the trustworthiness and reliability of the Trustworthy & Reliability (T & R) Official as determined in accordance with subdivision 5 of this subsection. (See the NRC's website at www.nrc.gov for more information on submitting fingerprints, including pricing and address changes). The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of subdivision B 1 of this section, in making a determination whether to grant unescorted access to certain radioactive materials;

e. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in subsection A of this section; and

f. The licensee shall document the basis for its determination whether to grant or continue to allow unescorted access to risk significant radioactive materials equal to or greater than those listed in subsection A of this section.

2. Prohibitions. A licensee shall not base a final determination to deny an individual unescorted access to certain radioactive material solely on the basis of information received from the FBI involving: an arrest more than one year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal. A licensee shall not use information received from a criminal history check obtained pursuant to this section in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

3. Right to correct and complete information. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one year from the date of the notification. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law-enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700. In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency.

The licensee must provide at least 10 days for an individual to initiate an action challenging the results of an FBI identification and criminal history records check after the record is made available for his review. The licensee may make a final unescorted access to certain radioactive material determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on unescorted access to certain radioactive material, the licensee shall provide the individual its documented basis for denial. Unescorted access to certain radioactive material shall not be granted to an individual during the review process.

4. Protection of information.

a. Each licensee who obtains a criminal history record on an individual pursuant to this section shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

b. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to certain radioactive material. No individual authorized to have access to the information may re-

disseminate the information to any other individual who does not have a need to know.

c. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

d. The licensee shall make criminal history records obtained under this section available for examination by an authorized representative of VDH to determine compliance with the regulations.

e. The licensee shall retain all fingerprints and criminal history records from the FBI, or a copy if the individual's file has been transferred, for three years after termination of employment or determination of unescorted access to certain radioactive material (whether unescorted access was approved or denied). After the required three-year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

5. Trustworthy & Reliability Official.

a. The licensee shall provide under oath or affirmation, a certification to the agency that the T & R Official (an individual with the responsibility to determine the trustworthiness and reliability of another individual requiring unescorted access to the radioactive materials identified in subsection A of this section) is deemed trustworthy and reliable by the licensee as required in subdivision 5 b below.

b. The T & R Official, if he does not require unescorted access, must be deemed trustworthy and reliable by the licensee in accordance with the requirements of subdivision B 1 of this section before making a determination regarding the trustworthiness and reliability of another individual. If the T & R Official requires unescorted access, the licensee must consider the results of fingerprinting and the review of an FBI identification and criminal history records check as a component in approving a T & R Official.

6. The licensee shall notify the agency at (804) 864-6168 and the NRC HQ Operations Center at (301) 816-5100 within 24 hours if the results from an FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

7. Prior to requesting fingerprints from any individual, the licensee shall provide a copy of 12VAC5-481-451 to that individual.

VA.R. Doc. No. R09-1739; Filed May 29, 2009, 10:15 a.m.

Proposed Regulation

Title of Regulation: **12VAC5-650. State Board of Health Schedule of Civil Penalties (adding 12VAC5-650-10 through 12VAC5-650-100).**

Statutory Authority: § 32.1-164 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

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

Agency Contact: Allen Knapp, Environmental Health Coordinator, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7458, FAX (804) 864-7475, or email allen.knapp@vdh.virginia.gov.

Basis: Section 32.1-164 J (effective July 1, 2009) of the Code of Virginia requires the State Board of Health to establish a uniform schedule of civil penalties for violations of regulations promulgated pursuant to § 32.1-164 B (collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging sewage systems and the maintenance, inspection, and reuse of alternative onsite sewage systems) that are not remedied within 30 days after service of notice from the Department of Health.

Purpose: The proposed regulation, while fulfilling specific statutory requirements, allows the Department of Health to employ civil penalties to enhance existing regulatory programs for supervising and controlling the safe and sanitary treatment and disposal of sewage. Currently, the department may ask for criminal penalties (Class I misdemeanor), may initiate civil proceedings, and may collect civil charges only with the consent of the affected party. Under the proposed regulation, the department may charge civil penalties in amounts that are relatively small in comparison to existing penalties. The goal of the regulation is to enhance the department's ability to protect public health and the environment by providing an enforcement tool that may be scaled to match the seriousness of a violation.

Substance: The proposed regulation specifies uniform penalties for violations of the board's regulations. The penalty for any one violation may not exceed $100 for the initial violation and $150 for each additional violation. Each day during which a violation is found to exist will constitute a separate offense; however, violations arising from the same set of operative facts may not be charged more than once in any 10-day period. A series of violations arising from the same set of operative facts may not result in civil penalties exceeding a total of $3,000. The department may not charge

civil penalties in cases where an unoccupied structure does not contribute to pollution of public or private water supplies or to the contraction or spread of disease. The department may pursue other remedies as provided by law; however, civil penalties must be in lieu of criminal penalties, except where a violation contributes to or is likely to contribute to the pollution of public or private water supplies or the contraction or spread of disease. The department may issue a civil summons ticket as provided by law for a scheduled violation.

Issues: The primary advantage to the public comes from improving the department's ability to protect citizens and the environment from the harmful effects of sewage. As the number of alternative onsite sewage systems in the Commonwealth continues to increase, citizens, local governments, regulators, and onsite sewage professionals agree that ongoing operation, maintenance, and monitoring of these systems is essential to ensure that they function properly. When these systems are not properly maintained and operated, they may discharge untreated or partially treated sewage directly into the Commonwealth's ground and surface waters. The board's regulations and policies increasingly require owners of alternative onsite sewage systems to perform certain activities, such as monitoring inspections and maintenance, to ensure that systems are operating properly. The ability to assess civil penalties, as an alternative to criminal enforcement, is a more effective enforcement strategy to employ in such a "performance-based" regulatory program. A disadvantage, expressed by some in the regulated communities, is that department staff may misuse or abuse the new penalties.

Civil penalties will improve the department's ability to enforce the board's regulations by providing another enforcement tool. Existing statutes provide for enforcement actions via the Administrative Process Act (APA) such as informal fact-finding conferences to make case decisions, e.g., permit suspension, revocation, the issuance of orders by the board, civil actions in circuit courts, and criminal actions. These are relatively "heavy" actions that are appropriate in some cases. Currently, civil charges can only be collected with the consent of the affected party and are employed in conjunction with a consent order. Properly used, civil penalties can be viable alternatives when existing enforcement tools are too heavy-handed for many routine enforcement actions. Civil penalties are not intended to be punitive, but are intended to encourage compliance with environmental health regulations before a situation deteriorates to the point that heavier enforcement is warranted. A disadvantage to the agency will be the perceived drains on agency staff and resources required to implement the new civil penalties.

Civil penalties are particularly critical for managing the onsite sewage and alternative discharging sewage system programs. Several local governments have enacted ordinances requiring operation and maintenance of alternative onsite sewage systems. The department is currently developing new regulations for the board that will require routine monitoring, maintenance, and reporting for alternative onsite systems. These are already required in the alternative discharging system program. Typically, an owner is responsible for maintaining a contract with a private-sector provider to perform routine inspections, tests, and maintenance. The owner (or the provider) must forward inspection reports and test results to the department. Criminal or other "heavy" enforcement actions are not appropriate for situations, such as the failure to submit a report or keep a maintenance contract in effect. Civil penalties will provide options for the department to scale its enforcement actions to the seriousness of a particular situation. The department will develop administrative guidelines for implementing the civil penalties. These guidelines will seek to ensure that the penalties are not abused or misused by staff.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 514 of the 2007 Virginia Acts of Assembly the State Board of Health (Board) is proposing to establish a uniform schedule of civil penalties for violations of regulations pertaining to onsite sewage and alternative discharge sewage treatment systems.

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

Estimated Economic Impact. Chapter 514 of the 2007 Virginia Acts of Assembly amended Virginia Code § 32.1-164 to state that:

> The Board shall establish a uniform schedule of civil penalties for violations of regulations (concerning the collection, conveyance, transportation, treatment and disposal of sewage by onsite sewage systems and alternative discharging sewage systems)… that are not remedied within 30 days after service of notice from the Department (of Health). Civil penalties collected pursuant to this chapter shall be credited to the Environmental Health Education and Training Fund ….

Further,

> This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be not more than $100 for the initial violation and not more than $150 for each additional violation. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties exceeding a total of $3,000.

The Board proposes the following civil penalties, which are consistent with the statute:

- For installation, modification, use, or operation without a permit, $100 for the first violation, $150 for each additional violation.
- For the discharge of sewage onto the ground or into water without a permit, $100 for the first violation, $150 for each additional violation.
- For failure to obtain or maintain a contract in accordance with board regulations, $50 for the first violation, $100 for each additional violation.
- For failure to submit a test result or report in accordance with board regulations, $50 for the first violation, $100 for each additional violation.
- For engaging in unlawful transportation or handling of sewage or septage, $100 for the first violation, $150 for each additional violation.
- For other unlawful acts described in the regulations, $25 for the first violation, $50 for each additional violation.

Prior to the establishment of civil penalties, the Virginia Department of Health may only enforce the Board's regulations via permit suspension or revocation, the issuance of orders by the Board, civil actions in circuit courts, or by criminal actions, which are all relatively heavy-handed punishments. The Department and Board have at times been reluctant to issue these heavy-handed punishments for routine enforcement actions. Additionally, civil charges can only be collected with the consent of the affected party and are employed in conjunction with a consent order. The proposed civil penalties, which do not require a consent order, may be enough to discourage violations that put public health at risk and cause less harm to recipients (of the penalties) than the more heavy-handed options. Thus, providing this tool to the Board and Department will likely provide a net benefit.

Businesses and Entities Affected. The proposed amendments potentially affect homeowners and businesses who own onsite and alternative discharging sewage systems, onsite sewage system installers, and individuals and businesses that provide maintenance services such as pumpouts, and repair or replacement of systems or system components. The Virginia Department of Health estimates that between 175 and 350 entities may be affected each year because of a sewage system malfunction that is not remedied within 30 days, and approximately 66 entities may incur a civil penalty.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal to establish a uniform schedule of civil penalties for violations of regulations pertaining to onsite sewage and alternative discharge sewage treatment systems will not likely significantly affect employment.

Effects on the Use and Value of Private Property. The proposal to establish a uniform schedule of civil penalties for violations of regulations pertaining to onsite sewage and alternative discharge sewage treatment systems may result in some homeowners and businesses receiving civil penalties who may not have otherwise been so fined. Thus, they may have a moderate reduction in property value. On the other hand, the threat of civil penalties may encourage homeowners and businesses to not violate the Board's regulations which could result in higher property values for neighboring properties.

Small Businesses: Costs and Other Effects. The proposal to establish a uniform schedule of civil penalties for violations of regulations pertaining to onsite sewage and alternative discharge sewage treatment systems may result in some small businesses receiving civil penalties who may not have otherwise been so fined. On the other hand, the threat of civil penalties may encourage homeowners and businesses to not violate the Board regulations which could result in higher property values for neighboring small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no clear alternative that would produce less cost while still reaping the same benefits.

Real Estate Development Costs. For firms and other entities that abide by the Board's regulations pertaining to onsite sewage and alternative discharge sewage treatment systems, the proposal to establish a uniform schedule of civil penalties for violations produces no cost. To the extent that the civil penalties discourage sewage violations from neighbors and previous property owners, the proposal to establish a uniform schedule of civil penalties for violations of regulations pertaining to onsite sewage and alternative discharge sewage treatment systems may reduce 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 submitted by the Department of Planning and Budget.

Summary:

This proposed regulation establishes a uniform schedule of civil penalties for violations of the Board of Health's regulations pertaining to conventional and alternative onsite sewage systems, and for violations of the Board of Health's regulations pertaining to alternative discharging sewage treatment systems for individual single family homes.

CHAPTER 650
STATE BOARD OF HEALTH SCHEDULE OF CIVIL PENALTIES

12VAC5-650-10. Definitions.

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

"Board" means the State Board of Health.

"Department" means the Virginia Department of Health.

"Transportation of sewage or septage" means actions associated with removing septage, sludge, or sewage from an onsite sewage system, a sewerage system, or other treatment works, including, but not limited to, using a pump or other device or gravity flow to collect septage, sludge, or sewage in a tank or other vessel intended to contain the septage, sludge, or sewage during transport to another location.

12VAC5-650-20. Purpose and authority.

The board has promulgated this chapter to:

1. Establish a uniform schedule of civil penalties for violations of 12VAC5-610, the Sewage Handling and Disposal Regulations (or successor), and 12VAC5-640, the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (or successor);

2. Support enforcement activities necessary to discharge the board's responsibility to supervise and control the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage as they affect the public health and welfare;

3. Support enforcement activities necessary to discharge the board's responsibility to exercise due diligence to protect the quality of ground and surface waters; and

4. Guide the State Health Commissioner in charging civil penalties.

12VAC5-650-30. Applicability.

A. This chapter applies only in those localities where the local government has entered into a contract with the department for the operation of local and district health departments. It does not apply in any locality that has not entered into such a contract.

B. This chapter applies to those activities conducted pursuant to 12VAC5-610 and 12VAC5-640 or successor regulations promulgated by the board as described herein. Except as provided in § 32.1-164 J of the Code of Virginia, this chapter may not be construed to limit the board's or the commissioner's authority to enforce any law or regulation administered by the board or to enforce any order of the board.

12VAC5-650-40. Administration.

A. The board has the responsibility to promulgate, amend, and repeal regulations necessary to ensure the safe and sanitary handling and disposal of sewage via onsite sewage systems and alternative discharging sewage systems as these affect public health. Nothing in this chapter may be construed to limit the board's authority to enforce any law administered by it, any regulation promulgated by it, or any case decision rendered by it or by the commissioner.

B. The State Health Commissioner is the chief executive officer of the department. The commissioner has the authority to act, within the scope of regulations promulgated by the board, for the board when it is not in session. The department is designated as the primary agent of the commissioner for the purpose of administering this chapter. The commissioner may delegate his powers under this chapter.

C. Section 32.1-30 of the Code of Virginia requires each county and city to establish and maintain a local department of health that is responsible for enforcing all health laws of the Commonwealth and regulations of the board. With the concurrence of each county and city government affected, the commissioner may create a district health department composed of such local health departments. The commissioner appoints the local or district health director in those localities that enter into a contract with the department for the operation of the local or district health department. In such localities the local or district health director is responsible for implementing this chapter. The authority to implement this chapter is hereby delegated to local and district health directors who are employees of the department; such local and district health directors may delegate to subordinates as they deem necessary. Nothing in this section

may be construed as limiting the commissioner's authority to delegate his powers as provided in law.

12VAC5-650-50. Conduct declared unlawful.

The following conduct is hereby declared unlawful and subject to civil penalties in accordance with this chapter:

1. Violation of any provision of 12VAC5-610, the Sewage Handling and Disposal Regulations or successor regulation promulgated by the board, including failure to comply with the provisions, requirements, conditions, or standards contained in a construction permit or in an operating permit.

2. Violation of any provision of 12VAC5-640, the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings or successor regulation promulgated by the board, including failure to comply with the provisions, requirements, conditions, or standards contained in a construction permit or in an operating permit.

3. Failure to comply with any order issued by the board or commissioner.

12VAC5-650-60. Uniform schedule of civil penalties.

A. There is hereby established a uniform schedule of civil penalties for the following violations of the board's regulations:

1. Install or cause to install, modify or cause to modify, use or operate an onsite or alternative discharging sewage system without a permit issued by the commissioner: $100 for the first violation, $150 for each additional violation.

2. Discharge treated or untreated sewage on the surface of the ground or into the waters of the Commonwealth without a permit: $100 for the initial violation, $150 for each additional violation.

3. Fail to obtain or keep a contract for operation, maintenance, or monitoring of an onsite or alternative discharging system to the extent that such contract is a requirement of the board's regulations: $50 for the initial violation, $100 for each additional violation.

4. Fail to submit to the department a laboratory test result, or an inspection or other report to the extent that such report is a requirement of the board's regulations: $50 for the initial violation, $100 for each additional violation.

5. To the extent such activities are not regulated by another agency of the Commonwealth, engage in unlawful transportation or handling of sewage or septage: $100 for the initial violation, $150 for each additional violation.

6. Any unlawful act described in 12VAC5-650-60 not specifically described in this subsection: $25 for the initial violation, $50 for each additional violation.

B. The department may not charge civil penalties pursuant to this chapter for activities related to land development.

C. The department may not charge civil penalties pursuant to this chapter for an unoccupied structure unless such structure contributes to the pollution of public or private water supplies or the contraction or spread of infectious, contagious, or dangerous diseases.

12VAC5-650-70. Criminal prosecution precluded.

In accordance with § 32.1-164 J of the Code of Virginia, designation of a particular violation for a civil penalty pursuant to this chapter must be in lieu of criminal penalties, except for any violation that contributes to or is likely to contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious, or dangerous diseases.

12VAC5-650-80. Civil summons ticket.

A. The department must prepare a civil summons ticket for use in implementing this chapter.

B. In addition to any information the department deems necessary, the ticket must contain the following information:

1. A statement notifying the recipient that he may make an appearance in person or in writing by mail to the department prior to the date fixed for trial in court;

2. A statement that any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged;

3. The physical address, hours of operation, and mailing address for the local or district health department responsible for issuing the civil summons;

4. A statement that civil penalties may be paid only by cashier's check or certified check made payable to the Treasurer of Virginia; and

5. The date fixed for trial in general district court.

12VAC5-650-90. Authority to issue civil summons ticket; penalties collected.

A. Any employee of the department who has been delegated authority pursuant to this chapter may issue a civil summons ticket in accordance with this chapter.

1. The civil summons ticket may be delivered in person after presentation of proper credentials.

2. The department may deliver a civil summons ticket in any other manner provided by law.

B. All civil penalties collected pursuant to this chapter shall be credited to the Environmental Health Education and Training Fund established pursuant to § 32.1-248.3 of the Code of Virginia.

12VAC5-650-100. Requirements for civil summons ticket.

A. Before the department may issue any civil summons ticket pursuant to this chapter, the following must occur:

1. The department shall notify the alleged violator as required in the board's regulations;

2. At least 30 days shall have passed from the date the alleged violator received notice of the violation; and

3. The violation must remain uncorrected.

B. Violations arising from the same operative set of facts shall not be charged more than once in any 10-day period nor shall the department charge more than one civil penalty from the same set of operative facts.

VA.R. Doc. No. R08-1522; Filed June 1, 2009, 12:03 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Titles of Regulations: **12VAC30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-560).**

12VAC30-20. Administration of Medical Assistance Services (adding 12VAC30-20-141; repealing 12VAC30-20-140).

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

Effective Date: July 23, 2009.

Agency Contact: Kathy Colley, Fiscal Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-3839, FAX (804) 786-1680, or email kathy.colley@dmas.virginia.gov.

Summary:

The amendments update and clarify the current regulations regarding Medicaid estate recovery carried out by the Department of Medical Assistance Services. This regulatory action more closely reflects current agency practice based upon language provided by the federal Medicaid agency, the Centers for Medicare and Medicaid Services, in its guidance document publication titled "State Medicaid Manual." This change repeals 12VAC30-20-140 (Estate Recoveries) in order to repromulgate this section in a restructured and revised format as 12VAC30-20-141. This regulatory action adds new definitions for "cost effective" and "homestead of modest value." The definitions for "estate" and "applicable medical payments" are deleted from 12VAC30-10-560 and moved into new 12VAC30-20-141. This revision also includes the exemption from Medicaid estate recovery for American Indian/Alaska Native income, resources, and property as defined in the federal State Medicaid Manual. Consistent with the State Medicaid Manual, assets or resources that were disregarded due to an authorized state long-term medicaid insurance partnership policy are being exempted from estate recovery actions.

In response to public comment, changes reflected in the final regulation include (i) modifying the definition of "homestead of modest value" to incorporate the term "median" in addition to "average price"; (ii) clarifying new policies by adding references concerning their application to services received by recipients age 55 or older; (iii) clarifying new policies by using specific terms more consistently; and (iv) correcting regulatory text to show that anyone can apply for a hardship waiver, but DMAS will decide, pursuant to its regulations, if such an application has merit.

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

12VAC30-10-560. Liens and recoveries.

Liens are not imposed against an individual's property.

A. Adjustments or recoveries for Medicaid claims correctly paid are as follows: See ~~12VAC30-20-140~~ 12VAC30-20-141.

1. For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate.

2. For any individual who received medical assistance at age 55 or older, recovery of payments are made for nursing facility services, home- and community-based services, and related hospital and prescription drug services.

Payments are recovered for all services covered under the plan which are provided to individuals at age 55.

~~3. For any individual with long-term care insurance policies, if assets or resources are disregarded, recovery is made for all Medicaid costs for nursing facility and other long-term care services from the estate of persons who have such policies.~~

~~4.~~ 3. If an individual covered under a qualified long-term care partnership insurance policy pursuant to § 32.1-325 of the Code of Virginia received benefits for which assets or resources were disregarded as provided for in 12VAC30-40-290 G, the ~~state~~ Commonwealth does not seek adjustment or recovery from the individual's estate for the amount of assets or resources disregarded.

B. No money payments under another program are reduced as a means of recovering Medicaid claims incorrectly paid.

C. Liens. See 12VAC30-20-130.

1. Specifies the process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home; the description of the process meets the requirements of 42 CFR 433.36(d).

The Commonwealth does not impose liens [;] therefore [,] this subsection is not applicable.

2. Specifies the criteria by which a son or daughter can establish that he or she has been providing care under 42 CFR 433.36(f).

[The Commonwealth does not impose liens; therefore, this subsection is not applicable.]

3. Definitions: individual's home; equity interest in home; residing in home for at least 1 or 2 years, on a continuing basis; discharge from the medical institution and return home; and lawfully residing.

The Commonwealth does not impose liens [;] therefore [,] this subsection is not applicable.

D. Estate recoveries. ~~1. Definitions.~~

~~"Applicable medical assistance payments" means the amount of any medical assistance payments made on behalf of an individual under Title XIX of the Social Security Act.~~

~~"Estate" means with respect to a deceased individual, (i) all real and personal property and other assets held by the individual at the time of death and (ii) any other real and personal property and other assets in which the individual had any legal title or interest (to the extent of such interest) at the time of death. 2. 12VAC30-20-140 further~~ 12VAC30-20-141 (Attachment 4.17-C) specifies the policy for estate recoveries.

12VAC30-20-140. ~~Estate recoveries.~~ (Repealed.)

~~A. General. Under the authority and consistent with the requirements of the Social Security Act § 1917, the Commonwealth recovers certain Medicaid benefits when they have been correctly paid on behalf of certain individuals. The Commonwealth seeks recovery for all services which have been paid for consistent with the coverage and reimbursement policies in the State Plan for Medical Assistance.~~

~~B. Identification of deceased recipients' estates. The Medical Assistance Title XIX agency shall take all reasonable measures to determine the existence of deceased eligible individuals with recoverable estates.~~

~~C. Initiation of claim and recovery.~~

~~1. The Medical Assistance Title XIX agency's estate recovery unit will review and initiate recovery activities for all deceased eligible individual's estates identified which meet agency minimum criteria defined in subsection B of this section. A review of all deceased eligible individuals' applicable medical assistance payments paid correctly must be performed to determine the amount of the Commonwealth's claim against the estate. A "Notice of Claim" shall be sent to the deceased eligible individual's estate administrator or executor upon determination that estate recovery meets the minimum criteria. The "Notice of Claim" shall include, at minimum, (i) the deceased eligible individual's identification information, (ii) the claim amount, (iii) the agency contact, and (iv) the attached summary of applicable medical claims paid. The "Notice of Claim" shall also contain, but not necessarily be limited to, information regarding the exclusions identified below, the applicant's right to appeal, and the hardship rule.~~

~~2. The Medical Assistance Title XIX agency will, at a minimum, initiate recovery when the following conditions are met:~~

~~a. Legal estate administrator or executor has been verified.~~

~~b. Dollar amount of applicable medical assistance payments (claim amount) and estate meets agency cost effective threshold. The Title XIX agency will determine a cost effective threshold based on the administrative costs to pursue recovery from an estate. The Title XIX agency will adjust the cost effective threshold as the agency's administrative costs change. Recovery shall not be initiated unless both the amount of the claim and the value of the estate at least exceed the administrative cost of recovery.~~

~~c. Deceased eligible was single or surviving spouse is deceased.~~

~~d. Deceased eligible has no surviving children under 21 or children who are blind or disabled.~~

~~e. Deceased eligible was 55 years of age or older when the individual received such medical assistance.~~

~~f. Deceased eligible had no surviving sibling who had an equity interest in the deceased's home and such sibling resided in the property for at least one year prior to the deceased's entering a nursing facility.~~

~~3. Appeals related to the recovery of funds will be administered by the Medical Assistance Title XIX agency.~~

~~4. The Medical Assistance Title XIX agency will pursue recovery only to the extent that payments for applicable medical claims have been correctly made under the State Plan for Medical Assistance.~~

~~D. Hardship clause. The Medical Assistance Title XIX agency shall waive its claim if it determines that enforcement of the claim would result in substantial hardship to the devisees, legatees, and heirs or dependents of the individual against whose estate the claim exists. Special consideration shall be given to cases in which the estate subject to recovery~~

~~is (i) the sole income-producing asset of survivors (where such income is limited), such as a family farm or other business, or (ii) a homestead of modest value, or (iii) other compelling circumstances. In cases where recovery is not waived and beneficiaries of the estate from which recovery is sought wish to satisfy the Commonwealth's claim without selling a nonliquid asset which is subject to recovery, alternative methods of recovery may be considered.~~

~~E. If an individual covered under a long-term care partnership insurance policy received benefits for which assets or resources were disregarded as provided for in 12VAC30-40-290-G, the state does not seek adjustment or recovery from the individual's estate for the amount of assets or resources disregarded.~~

12VAC30-20-141. Estate recoveries.

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

"Act" means the Social Security Act (42 USC § 1396) as applicable.

"Applicable medical assistance payment" means the amount of any medical assistance payments made on behalf of an individual under Title XIX of the Social Security Act.

"Claim" means, for the purposes of this section, action taken by DMAS to recover from the estate of an individual, who was age 55 or older when that person received medical assistance, the total amount of assistance paid for services consistent with the coverage and reimbursement policies in the State Plan for Medical Assistance.

"Cost effective" means that both the dollar amount of the medical assistance payments (claim) and the value of the estate at least exceed the administrative costs of recovery.

"Dual eligibles" mean individuals who are entitled to Medicare hospital insurance under Part A or supplementary medical insurance under Part B, or both, and are eligible for some form of Medicaid benefit.

"Estate" means, with respect to a deceased individual, (i) all real and personal property and other assets held by the individual at the time of death and (ii) any other real and personal property and other assets in which the individual had any legal title or interest (to the extent of such interest) at the time of his death.

"Homestead of modest value" means a home that is worth 50% or less of the average [or median] price, as contained in the most recent U.S. Census data [or any other such source of home value information as published in the agency's guidance documents] , of homes in the county or city, as appropriate, where the homestead is located as of the date of the individual's death.

"Undue hardship" means that DMAS has determined that enforcement of a claim to recover Medicaid benefits would result in substantial hardship to the devisees, legatees, and heirs or dependents of the deceased individual against whose estate the Medicaid claim exists.

B. Under the authority and consistent with the requirements of the Social Security Act § 1917 (the Act), the Commonwealth shall recover applicable medical assistance payments when such payments have been correctly or incorrectly paid on behalf of certain individuals. The Department of Medical Assistance Services (DMAS) shall provide notice of the Commonwealth's Medicaid estate recovery program at the time of application for medical assistance.

C. Adjustment and recovery. Adjustment or recovery can only be made after the death of the individual's surviving spouse, if any, and only at a time when the individual has no surviving child under age 21, or a blind or disabled child as defined in § 1614 of the Act. The Commonwealth shall seek adjustment or recovery of all medical assistance payments correctly paid on behalf of an individual [who is age 55 or older] under the State Plan as follows:

1. The Commonwealth shall seek adjustment or recovery from the estate of an individual who was age 55 or older when that person received medical assistance. The Commonwealth shall recover amounts up to the total amount spent on the individual's behalf for medical assistance for all items or services provided for the individual under the State Plan.

2. The Commonwealth shall recover from the estates of the following dual eligibles who receive full Medicaid benefits in addition to Medicare: (i) qualified Medicare beneficiaries with full Medicaid benefits (QMB Plus), (ii) specified low-income Medicare beneficiaries with full Medicaid benefits (SLMB Plus), and (iii) Medicare beneficiaries eligible for a limited package of Medicaid benefits [~~QMB~~ non-QMB] , SLMB, qualified individuals (QI) or qualified disabled and working individuals (QDWI)). The Commonwealth shall recover from the individual's estate for all medical assistance payments made on behalf of the individual. In addition, the Commonwealth shall include in the Commonwealth's claim against the estate, amounts expended for Medicare cost-sharing or Medicare premiums, or both.

3. The Commonwealth shall recover from individuals with long-term care insurance policies. [~~The~~ However, the] Commonwealth shall not seek adjustment or recovery from the individual's estate for all Medicaid costs for nursing facility and other long-term care services if assets or resources are disregarded to the extent of payments made under a qualified long-term care partnership insurance policy.

4. Estate recovery and managed care. When a Medicaid beneficiary is enrolled in a managed care organization and services are provided by the managed care organization that are included under the State Plan, the Commonwealth shall seek adjustment or recovery from the individual's estate for the [~~premium~~ capitation] payments in the Commonwealth's claim against the estate. When the individual enrolls in the managed care organization, the Commonwealth shall provide a separate notice to the individual that explains that the [~~premium~~ capitation] payments made to the managed care organization are included in whole in the claim against the estate. The Commonwealth shall recover from the individual's estate the total capitation rate for the period the individual was enrolled in the managed care organization.

5. The following American Indian/Alaska Native (AI/AN) income, resources, and property shall be exempt from Medicaid estate recovery pursuant to § 1917(b)(3) of the Act for hardship applicable to federally recognized tribes:

a. Certain AI/AN income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) that are exempt from Medicaid estate recovery by other laws and regulations;

b. Ownership interest in trust or nontrust property, including real property and improvements:

(1) Located on a reservation (any federally recognized Indian tribe's reservation or near a reservation) as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior; or

(2) For any federally recognized tribe not described in this subdivision, located within the most recent boundaries of a prior federal reservation.

(3) Protection of nontrust property described in this subdivision is limited to circumstances when it passes from an Indian (as defined in § 4 of the Indian Health Care Improvement Act, 25 USC §§ 1601-1683) to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses and step-children, that their culture would nevertheless protect as family members; to a tribe or tribal organization or to one or more Indians, or all of these;

c. Income left as a remainder in an estate derived from property protected in this subdivision, that was either collected by an Indian, or by a tribe or tribal organization and distributed to an Indian or Indians, as long as the individual can clearly trace such income as coming from the protected property.

d. Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources (including, but not necessarily limited to, extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights, and income either collected by an Indian, or by a tribe or tribal organization and distributed to an Indian or Indians derived from these sources as long as the individual can clearly trace the interest as coming from protected sources.

e. Ownership interests in or usage rights to items not covered by this subdivision that have unique religious, spiritual, traditional, or cultural significance or rights, or all of these, that support subsistence or a traditional lifestyle according to applicable tribal law or custom.

6. The Commonwealth shall recover the following income, resources and property from the estates of American Indians and Alaska Natives:

a. Ownership interests in assets and property, both real and personal, that are not described in this subdivision.

b. Any income and assets left as a remainder in an estate that do not derive from protected property or sources in this subdivision.

7. Reparation payments to individuals. Government reparation payments to special populations shall be exempt from Medicaid estate recovery.

8. Annuities. The Commonwealth considers annuities to be legal devices by which ownership of assets, such as estates, is defined and therefore may seek recovery from individuals' estates that may include such annuities. [~~This provision is effective for deaths or estates that are opened 90 days after the Commonwealth meets applicable state and federal law for appropriate notice and due process.~~]

D. Undue hardship. Whenever estate recovery would work an undue hardship on the deceased individual's heirs, the Commonwealth shall waive adjustment or recovery. Recovery from deceased individuals' estates shall be waived when the heirs are themselves Medicaid eligible. [~~The Commonwealth shall determine whether individuals who will be affected by Medicaid estate recovery may have the right to apply for an undue hardship waiver~~ Anyone who may be affected by Medicaid estate recovery may apply for an undue hardship waiver. DMAS shall determine the merit of such applications].

1. Special consideration shall be shown in cases in which the estate subject to recovery is: (i) the sole income-producing asset of survivors (where such income is limited), such as a family farm or other family business; (ii) a homestead of modest value; or (iii) [one in which]

other compelling circumstances [exist] as may be set out in agency guidance documents.

2. [~~The Commonwealth may determine that an~~ An] undue hardship exists when [the Commonwealth determines that] it would not be cost effective to recover the assistance paid.

3. In cases where recovery is not waived and heirs of the estate from which recovery is sought wish to satisfy the Commonwealth's claim without selling a nonliquid asset that is subject to recovery, alternative methods of recovery may be considered. DMAS may also establish a reasonable payment schedule.

4. The Commonwealth may limit the hardship waiver to the time period during which the undue hardship circumstances existed or continue to exist.

5. An undue hardship shall not exist if the beneficiary created the hardship by resorting to estate planning methods under which the beneficiary divested assets in order to avoid estate recovery.

E. DMAS shall establish collection procedures to include identification of the estate administrator or executor, determination of the medical assistance claim amount, notification procedures, and such other procedures as are appropriate to pursue the recovery of medical assistance expenditures. Such procedures will be set out in an agency guidance document.

F. Recovery or adjustment not cost effective. [DMAS shall establish a cost effectiveness threshold below which estate recovery will not be pursued.]

1. The Commonwealth may waive adjustment or recovery in cases in which it is determined that it would not be cost effective for the Commonwealth to recover from a deceased individual's estate. The estate administrator, executor, survivor, or heir does not need to assert undue hardship in such situations.

2. In determining whether recovery would be cost effective, the department may consider, but is not limited to consideration of, the following costs: staff time, litigation costs, expert witness fees, deposition expenses, travel expenses, office supplies, postage, advertising, and publishing costs. DMAS shall adjust the cost effective threshold as the agency's administrative costs change.

G. Appeals. The DMAS Appeals Division will administer appeals related to the recovery of funds pursuant to 12VAC30-110.

VA.R. Doc. No. R07-750; Filed May 28, 2009, 2:43 p.m.

Final Regulation

Titles of Regulations: **12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination (amending 12VAC30-30-20).**

12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-280, 12VAC30-40-290; adding 12VAC30-40-105).

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (adding 12VAC30-60-200).

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30).

12VAC30-110. Eligibility and Appeals (adding 12VAC30-110-1500).

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

Effective Date: July 23, 2009.

Agency Contact: Jack Quigley, Policy & Research, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1300, FAX (804) 786-1680, or email jack.quigley@dmas.virginia.gov.

Summary:

This regulatory action implements a mandated Medicaid Buy-In program as required by Item 302 X of Chapter 3 of the 2006 Acts of Assembly. This new program, called Medicaid Works, requires the amendment of several subsections of the DMAS regulations in the areas of Medicaid eligibility, new alternative benefit services, and provider reimbursement. The Medicaid Works Buy-In program creates an incentive for disabled Medicaid enrollees who desire to be employed to have added income that will not count against their eligibility income limits. Presently, Medicaid enrollees who have disabilities, but who still have the capacity to be gainfully employed, could lose their Medicaid eligibility due to excess income if they are employed. This change reduces the financial restrictions to which such enrollees may be subject.

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

12VAC30-30-20. Optional groups other than the medically needy.

The Title IV A agency determines eligibility for Title XIX services.

1. Caretakers and pregnant women who meet the income and resource requirements of AFDC but who do not receive cash assistance.

2. Individuals who would be eligible for AFDC, SSI or an optional state supplement as specified in 42 CFR 435.230, if they were not in a medical institution.

3. A group or groups of individuals who would be eligible for Medicaid under the plan if they were in a NF or an ICF/MR, who but for the provision of home and community-based services under a waiver granted under 42 CFR Part 441, Subpart G would require institutionalization, and who will receive home and community-based services under the waiver. The group or groups covered are listed in the waiver request. This option is effective on the effective date of the state's § 1915(c) waiver under which this group(s) is covered. In the event an existing § 1915(c) waiver is amended to cover this group(s), this option is effective on the effective date of the amendment.

4. Individuals who would be eligible for Medicaid under the plan if they were in a medical institution, who are terminally ill, and who receive hospice care in accordance with a voluntary election described in § 1905(o) of the Act.

5. The state does not cover all individuals who are not described in § 1902(a)(10)(A)(i) of the Act, who meet the income and resource requirements of the AFDC state plan and who are under the age of 21. The state does cover reasonable classifications of these individuals as follows:

a. Individuals for whom public agencies are assuming full or partial financial responsibility and who are:

(1) In foster homes (and are under the age of 21).

(2) In private institutions (and are under the age of 21).

(3) In addition to the group under subdivisions 5 a (1) and (2) of this section, individuals placed in foster homes or private institutions by private nonprofit agencies (and are under the age of 21).

b. Individuals in adoptions subsidized in full or part by a public agency (who are under the age of 21).

c. Individuals in NFs (who are under the age of 21). NF services are provided under this plan.

d. In addition to the group under subdivision 5 c of this section, individuals in ICFs/MR (who are under the age of 21).

6. A child for whom there is in effect a state adoption assistance agreement (other than under Title IV-E of the Act), who, as determined by the state adoption agency, cannot be placed for adoption without medical assistance because the child has special care needs for medical or rehabilitative care, and who before execution of the agreement:

a. Was eligible for Medicaid under the state's approved Medicaid plan; or

b. Would have been eligible for Medicaid if the standards and methodologies of the Title IV-E foster care program were applied rather than the AFDC standards and methodologies.

The state covers individuals under the age of 21.

7. Section 1902(f) states and SSI criteria states without agreements under §§ 1616 and 1634 of the Act.

The following groups of individuals who receive a state supplementary payment under an approved optional state supplementary payment program that meets the following conditions. The supplement is:

a. Based on need and paid in cash on a regular basis.

b. Equal to the difference between the individual's countable income and the income standard used to determine eligibility for the supplement.

c. Available to all individuals in each classification and available on a statewide basis.

d. Paid to one or more of the following classifications of individuals:

(1) Aged individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(2) Blind individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(3) Disabled individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(4) Individuals receiving a state administered optional state supplement that meets the conditions specified in 42 CFR 435.230.

The supplement varies in income standard by political subdivisions according to cost-of-living differences.

The standards for optional state supplementary payments are listed in 12VAC30-40-250.

8. Individuals who are in institutions for at least 30 consecutive days and who are eligible under a special income level. Eligibility begins on the first day of the 30-day period. These individuals meet the income standards specified in 12VAC30-40-220.

The state covers all individuals as described above.

9. Individuals who are 65 years of age or older or who are disabled as determined under § 1614(a)(3) of the Act, whose income does not exceed the income level specified in 12VAC30-40-220 for a family of the same size, and whose resources do not exceed the maximum amount allowed under SSI.

10. Individuals required to enroll in cost-effective employer-based group health plans remain eligible for a minimum enrollment period of one month.

11. Women who have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act in accordance with § 1504 of the Act and need treatment for breast or cervical cancer, including a pre-cancerous condition of the breast or cervix. These women are not otherwise covered under creditable coverage, as defined in § 2701(c) of the Public Health Services Act, are not eligible for Medicaid under any mandatory categorically needy eligibility group, and have not attained age 65.

12. Individuals who may qualify for the Medicaid Buy-In program under § 1902(a)(10)(A)(ii)(XV) of the Social Security Act (Ticket to Work Act) [,] if they meet the requirements for the 80% eligibility group described in 12VAC30-40-220, as well as the requirements described in 12VAC30-40-105 and 12VAC30-110-1500.

12VAC30-40-105 [.] Financial eligibility.

Working Individuals with Disabilities; Basic Coverage Group (Ticket to Work and Work Incentive Improvement Act (TWWIIA)).

The following standards and methods shall be applied in determining financial eligibility:

1. The agency applies the following income and resource standards to applicants of this program:

a. The individual's total countable income shall not exceed 80% of the current federal poverty income guidelines; [and]

b. The individual's total countable assets shall not exceed $2,000.

2. Income methodologies. In determining whether an individual meets the income standard described in subdivision 1 of this section, the agency uses more liberal income methodologies than the SSI program as further described in 12VAC30-40-280.

3. Resource methodologies. The agency uses resource methodologies in addition to any indicated in subdivisions 1 and 2 of this section that are more liberal than those used by the SSI program as described in 12VAC30-40-290.

12VAC30-40-280. More liberal income disregards.

A. For children covered under §§ 1902(a)(10)(A)(i)(III) and 1905(n) of the Social Security Act, the Commonwealth of Virginia will disregard one dollar plus an amount equal to the difference between 100% of the AFDC payment standard for the same family size and 100% of the federal poverty level for the same family size as updated annually in the Federal Register.

B. For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance shall be granted an income exemption consistent with the Act (§§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)). Any interest earned on one interest-bearing savings or investment account per assistance unit not to exceed $5,000, if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency, shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. For purposes of this section, "purposes related to self-sufficiency" shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the Medicaid assistance unit.

C. For the group described in §§ 1902(a)(10)(A)(i)(VII) and 1902(l)(1)(D), income in the amount of the difference between 100% and 133% of the federal poverty level (as revised annually in the Federal Register) is disregarded.

D. For aged, blind, and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of in-kind support and maintenance when determining eligibility. In-kind support and maintenance means food, clothing, or shelter or any combination of these provided to an individual.

E. For all categorically needy and medically needy children covered under the family and children covered groups, (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard all earned income of a child under the age of 19 who is a student.

F. For all categorically needy and medically needy individuals covered under the family and children covered groups (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard the fair market value of all in-kind support and maintenance as income in determining financial eligibility. In-kind support and maintenance means food, clothing or shelter or any combination of these provided to an individual.

G. Working individuals with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act who wish to increase their earnings while maintaining eligibility for Medicaid must establish Work Incentive (WIN) accounts

(see 12VAC30-40-290). The Commonwealth shall disregard earned income up to 200% of the federal poverty level for workers with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act. To be eligible for this earned income disregard, the income is subject to the following provisions:

1. Only earnings that are deposited into a Work Incentive (WIN) account can be disregarded for eligibility purposes.

2. All funds deposited and their source will be identified and registered with the department, for which prior approval has been obtained from the department, and for which the owner authorizes regular monitoring and/or reporting of these earnings and other information deemed necessary by the department for the proper administration of this provision.

3. A spouse's income will not be deemed to the applicant when determining whether or not the individual meets the financial eligibility requirements for eligibility under this section.

[~~G.~~ H.] For aged, blind and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of income derived from temporary employment with the United States Census Bureau for a decennial census.

[~~H.~~ I.] For all categorically needy and medically needy individuals covered under the family and children covered groups (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard income derived from the temporary employment with the United States Census Bureau for a decennial census.

12VAC30-40-290. More liberal methods of treating resources under § 1902(r)(2) of the Act: § 1902(f) states.

A. Resources to meet burial expenses. Resources set aside to meet the burial expenses of an applicant/recipient or that individual's spouse are excluded from countable assets. In determining eligibility for benefits for individuals, disregarded from countable resources is an amount not in excess of $3,500 for the individual and an amount not in excess of $3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by:

1. The face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources; and

2. The amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses.

B. Cemetery plots. Cemetery plots are not counted as resources regardless of the number owned.

C. Life rights. Life rights to real property are not counted as a resource. The purchase of a life right in another individual's home is subject to transfer of asset rules. See 12VAC30-40-300.

D. Reasonable effort to sell.

1. For purposes of this section, "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

2. A reasonable effort to sell is considered to have been made:

a. As of the date the property becomes subject to a realtor's listing agreement if:

(1) It is listed at a price at current market value; and

(2) The listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional interest; zoning restrictions; poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions); or

b. When at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient; or

c. When the applicant has personally advertised his property at or below current market value for 90 days by use of a "Sale By Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, or reasonable inquiries with all adjoining landowners or other potential interested purchasers.

3. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:

a. Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced after 12 months to no more than 100% of the tax-assessed value.

b. In the case where at least two realtors have refused to list the property, the recipient must personally try to sell

the property by efforts described in subdivision 2 c of this subsection for 12 months.

c. In the case of a recipient who has personally advertised his property for a year without success (the newspaper advertisements and "for sale" sign do not have to be continuous; these efforts must be done for at least 90 days within a 12-month period), the recipient must then:

(1) Subject his property to a realtor's listing agreement at price or below current market value; or

(2) Meet the requirements of subdivision 2 b of this subsection which are that the recipient must try to list the property and at least two realtors refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

4. If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The proceeds of the sale will be counted as a resource in determining continuing eligibility.

5. Once the applicant has demonstrated that his property is unsaleable by following the procedures in subdivision 2 of this subsection, the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in subdivision 3 of this subsection.

E. Automobiles. Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle or vehicles must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition (update monthly). In the event the vehicle is not listed, the value assessed by the locality for tax purposes may be used. The value of the additional motor vehicles is to be counted in relation to the amount of assets that could be liquidated that may be retained.

F. Life, retirement, and other related types of insurance policies. Life, retirement, and other related types of insurance policies with face values totaling $1,500 or less on any one person 21 years old and over are not considered resources. When the face values of such policies of any one person exceeds $1,500, the cash surrender value of the policies is counted as a resource.

G. Long-term care partnership insurance policy (partnership policy). Resources equal to the amount of benefits paid on the insured's behalf by the long-term care insurer through a Virginia issued long-term care partnership insurance policy shall be disregarded. A long-term care partnership insurance policy shall meet the following requirements:

1. The policy is a qualified long-term care partnership insurance policy as defined in § 7702B(b) of the Internal Revenue Code of 1986.

2. The policy meets the requirements of the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Regulation and Long-Term Care Insurance Model Act as those requirements are set forth in § 1917(b)(5)(A) of the Social Security Act (42 USC § 1396p).

3. The policy was issued no earlier than May 1, 2007.

4. The insured individual was a resident of a partnership state when coverage first became effective under the policy. If the policy is later exchanged for a different long-term care policy, the individual was a resident of a partnership state when coverage under the earliest policy became effective.

5. The policy meets the inflation protection requirements set forth in § 1917(b)(1)(C)(iii)(IV) of the Social Security Act.

6. The Insurance Commissioner requires the issuer of the partnership policy to make regular reports to the federal Secretary of Health and Human Services that include notification of the date benefits provided under the policy were paid and the amount paid, the date the policy terminates, and such other information as the secretary determines may be appropriate to the administration of such partnerships. Such information shall also be made available to the Department of Medical Assistance Services upon request.

7. The state does not impose any requirement affecting the terms or benefits of a partnership policy that the state does not also impose on nonpartnership policies.

8. The policy meets all the requirements of the Bureau of Insurance of the State Corporation Commission described in 14VAC5-200.

H. Reserved.

I. Resource exemption for Aid to Dependent Children categorically and medically needy (the Act §§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)).

For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance may have or establish one interest-bearing savings or investment account per assistance unit not to exceed $5,000 if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency. Any funds deposited in the account shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. Any amounts withdrawn and used for purposes related to self-sufficiency shall be exempt. For purposes of this section, purposes related to self-sufficiency shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the medical assistance unit.

J. Disregard of resources. The Commonwealth of Virginia will disregard all resources for qualified children covered under §§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(ii)(VIII), and 1905(n) of the Social Security Act.

K. Household goods and personal effects. The Commonwealth of Virginia will disregard the value of household goods and personal effects. Household goods are items of personal property customarily found in the home and used in connection with the maintenance, use and occupancy of the premises as a home. Examples of household goods are furniture, appliances, televisions, carpets, cooking and eating utensils and dishes. Personal effects are items of personal property that are worn or carried by an individual or that have an intimate relation to the individual. Examples of personal property include clothing, jewelry, personal care items, prosthetic devices and educational or recreational items such as books, musical instruments, or hobby materials.

L. Determining eligibility based on resources. When determining Medicaid eligibility, an individual shall be eligible in a month if his countable resources were at or below the resource standard on any day of such month.

M. Working individuals with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act who wish to increase their personal resources while maintaining eligibility for Medicaid shall establish Work Incentive (WIN) accounts. The Commonwealth will disregard up to the current annual SSI (Social Security Act, § 1619(b)) threshold amount (as established for Virginia by the Social Security Administration) held in WIN accounts for workers with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act. To be eligible for this resource disregard, WIN accounts are subject to the following provisions:

1. Deposits to this account shall derive solely from the individual's income earned after electing to enroll in the Medicaid Buy-In (MBI) program.

2. The balance of this account shall not exceed the current annual SSI (Social Security Act § 1619(b)) threshold amount (as established for Virginia by the Social Security Administration).

3. This account will be held separate from nonexempt resources in accounts for which prior approval has been obtained from the department, and for which the owner authorizes regular monitoring and reporting including deposits, withdrawals, and other information deemed necessary by the department for the proper administration of this provision.

4. A spouse's resources will not be deemed to the applicant when determining whether or not the individual meets the financial eligibility requirements for eligibility under this section.

5. Resources accumulated in the Work Incentive account shall be disregarded in determining eligibility for aged, blind [,] and disabled Medicaid-covered groups for one year after the individual leaves the Medicaid Buy-In program.

6. In addition, excluded from the resource and asset limit include amounts deposited in the following types of IRS-approved accounts established as WIN accounts: retirement accounts, medical savings accounts, medical reimbursement accounts, education accounts and independence accounts. Assets retained in these WIN accounts shall be disregarded for all future Medicaid eligibility determinations for aged, blind, or disabled Medicaid-covered groups.

12VAC30-60-200. Ticket to Work and Work Incentives Improvement Act (TWWIIA) basic coverage group: alternative benefits for Medicaid Buy-In program.

A. The state elects to provide alternative benefits under § 1937 of the Social Security Act. The alternative benefit package will be available statewide.

B. The population who will be offered opt-in alternative coverage and who will be informed of the available benefit options prior to having the option to voluntarily enroll in an alternative benefit package consists of working individuals with disabilities enrolled pursuant to the Social Security Act, § 1902(a)(10)(A)(ii)(XV) (Ticket to Work and Work Incentives Improvement Act) covered group or who meet the income, resource and eligibility requirements for the § 1902(a)(10)(A)(ii)(XV) covered group.

C. Medicaid Buy-In: program outreach.

1. Future Medicaid Works solicitations will be geared towards individuals who are currently covered in the SSI

and blind and disabled 80% federal poverty level groups; the letter will be an invitation to consider going to work, or to increase how much they work, and inform them that they will still be able to keep their Medicaid health care coverage.

2. They will be advised that this is voluntary and will enable them to earn higher income and retain more assets from their earnings. It will also explain that this option includes an alternative benefits package comprised of their regular Medicaid benefits plus personal assistance services for those who need personal assistance and related services in order to live and work in the community. It will be clearly stated that this program is optional. Their local eligibility worker will be able to review the advantages and disadvantages of this option in order to assist individuals in making an informed choice.

3. Current Medicaid Works enrollees will each receive personal communication by mail advising them of the new alternative benefits package and the steps needed in order to access personal assistance services. Should an enrolled individual be dissatisfied with this option or be unable to continue to be employed, their eligibility worker will reevaluate eligibility for other covered groups pursuant to changing the individual back to regular Medicaid coverage and, if necessary, to accessing personal assistance and related services through the existing home- and community-based services waivers.

4. Brochures describing this work incentive opportunity and alternative benefits option shall be prominently displayed and readily available at local departments of social services.

D. Description of Medicaid Buy-In alternative benefit package.

1. The state will offer an alternative benefit package that the secretary determines provides appropriate coverage for the population served.

2. This alternative benefits package includes all federally mandated and optional Medicaid State Plan services, as described and limited in 12VAC30-50, plus personal assistance services (PAS) for enrollees who otherwise meet the standards to receive PAS, defined as follows:

a. "Personal assistance services" or "PAS" means support services provided in home and community settings necessary to maintain or improve an individual's current health status. Personal care services are defined as help with activities of daily living, monitoring of self-administered medications, and the monitoring of health status and physical condition.

b. These services may be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. An additional component of PAS is work-related and postsecondary education personal services. This service will extend the ability of the personal assistance attendant to provide assistance in the workplace.

c. These services include filing, retrieving work materials that are out of reach; providing travel assistance for an individual with a mobility impairment; helping an individual with organizational skills; reading handwritten mail to an individual with a visual impairment; or ensuring that a sign language interpreter is present during staff meetings to accommodate an employee with a hearing impairment.

d. This service is only available to individuals who also require personal assistance services to meet their ADLs. Workplace or school supports are not provided if they are services provided by the Department of Rehabilitative Services, under IDEA, or if they are an employer's responsibility under the Americans with Disabilities Act or § 504 of the Rehabilitation Act.

e. Following an individual's assessment of the need for PAS and development of a plan of care, the individual will decide whether to have PAS through a personal care agency or whether to self direct his care. For individuals who choose consumer-directed care, DMAS will provide for the services of a fiscal agent to perform certain tasks as an agent for the recipient/employer who is receiving consumer-directed services. The fiscal agent will handle certain responsibilities for the individual, including but not limited to, employment taxes.

f. All governmental and private PAS providers are reimbursed according to the same published fee schedule, located on the agency's website at the following address: http://www.dmas.virginia.gov/pr-fee_files.htm. The agency's rates, based upon one-hour increments, were set as of July 1, 2006, and are effective for services on or after said dates. The agency's rates are updated periodically.

E. Wrap-around/additional services.

1. The state assures that wrap-around or additional benefits will be provided for individuals under 21 who are covered under the state plan pursuant to § 1902(a)(10)(A) of the Social Security Act to ensure early and periodic screening, diagnostic and treatment (EPSDT) services are provided when medically necessary.

2. Wraparound benefits must be sufficient so that, in combination with the Medicaid Buy-In package, these individuals receive the full EPSDT benefit, as medically necessary. The wraparound services provided are described in 12VAC30-50-130.

F. Delivery system.

1. The alternative benefit package will be furnished through a combination of the following methods:

a. On a fee-for-service basis consistent with the requirements of § 1902(a) and implementing regulations relating to payment and beneficiary free choice of provider;

b. On a fee-for-service basis consistent with the requirements cited in subdivision 1 a of this subsection, except that it will be operated with a primary care case management system consistent with § 1915(b)(1);

c. Through a managed care entity consistent with applicable managed care requirements; [or]

d. Through premium assistance for benchmark-equivalent in employer-sponsored coverage.

2. Personal assistance services will always be fee-for-service, whereas all other Medicaid-covered services shall be through one of three models: fee-for-service, primary care case management or through managed care organizations.

G. Additional assurances.

1. The state assures that individuals will have access, through the Medicaid Buy-In alternative benefit package, to rural health clinic (RHC) services and federally qualified health center (FQHC) services as defined in subparagraphs (B) and (C) of § 1905(a)(2).

2. The state assures that payment for RHC and FQHC services is made in accordance with the requirements of § 1902(bb) of the Social Security Act.

H. Cost effectiveness of plans: the Medicaid Buy-In alternative benefit package and any additional benefits must be provided in accordance with economy and efficiency principles.

I. Compliance with the law: The state will continue to comply with all other provisions of the Social Security Act in the administration of the state plan under this title.

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

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Dentists' services.

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

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

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

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

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

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

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

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

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

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

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

7. Local health services.

8. Laboratory services (other than inpatient hospital).

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

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

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

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

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

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

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

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. This percentage was determined by dividing the total commercial allowed amounts for Type I physicians for at least the top five commercial insurers in CY 2004 by what Medicare would have allowed. The average commercial allowed amount was determined by multiplying the relative value units times the conversion factor for RBRVS procedures and by multiplying the unit cost times anesthesia units for anesthesia procedures for each insurer and practice group with Type I physicians and summing for all insurers and practice groups. The Medicare equivalent amount was determined by multiplying the total commercial relative value units for Type I physicians times the Medicare conversion factor for RBRVS procedures and by multiplying the Medicare unit cost times total commercial anesthesia units for anesthesia procedures for all Type I physicians and summing.

c. Supplemental payments shall be made quarterly.

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

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

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

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

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

(2) Dividing the difference determined in subdivision 17 b (1) for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision (2) of this subdivision 17 b by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 17 b (3), Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12VAC30-80-190 B 2) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the

prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

18. Reserved.

19. Personal Assistance Services (PAS) for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the Single State Agency Website.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

12VAC30-110-1500. Working individuals with disabilities; basic coverage group (Ticket to Work and Work Incentive Improvement Act (TWWIIA)).

A. Definitions.

"Eligible person" means someone who is (i) disabled: an applicant is deemed to be disabled for the purposes of program eligibility if he is enrolled in the Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) programs. If the applicant has not had a disability determination through the Social Security Administration, he must have such a determination through the Disability Determination Services program, (ii) employed or can show proof of imminent prospective employment; (iii) between the ages of 16 years and 64 years; (iv) not subject to spending down of excess resources; (v) not an inpatient in an institution of mental disease (IMD), nor an inmate in a public institution that is not medical facility pursuant to the Act § 1902(a)(10)(A)(ii)(XV).

B. Scope/purpose. The purpose of this program shall be to afford persons who are disabled with the opportunity to be employed and retain more of their earned income without risking the loss of their Medicaid coverage of critical health care benefits.

C. In conformance with 12VAC30-30-20, 12VAC30-40-280, 12VAC30-40-290, and 12VAC30-40-105, eligible persons must meet the definition in subsection A of this section to be approved for this program.

D. In conformance with 12VAC30-40-105, working individuals with disabilities must meet these requirements for continuing eligibility pursuant to the Act § 1902(a)(10)(A)(ii)(XV):

1. Continue to meet the disability, age, and employment criteria described in this section. Individuals who, as enrollees, are unable to maintain employment due to illness or unavoidable job loss may remain in the program as unemployed for up to six months;

2. Have enrollee-countable earned income of no more than 200% FPL;

(a) The standard SSI methodology shall be used to determine "countable" income;

(b) The enrollee shall be treated as a "household of one" and spousal income shall be disregarded for ongoing enrollee eligibility; [and]

3. Have resources or assets up to the annual SSI "threshold amount" (Social Security Act, § 1619(b)) as established for Virginia by the Social Security Administration (SSA), if such resources or assets are accumulated solely from enrollee earnings after the individual is enrolled with Medicaid Buy-In under § 1902(a)(10)(A)(ii)(XV).

VA.R. Doc. No. R07-219; Filed May 28, 2009, 2:44 p.m.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Fast-Track Regulation

Titles of Regulations: **12VAC35-45. Regulations for Providers of Mental Health, Mental Retardation, Substance Abuse, and Brain Injury Residential Services for Children (repealing 12VAC35-45-10 through 12VAC35-45-210).**

12VAC35-46. Regulations for Children's Residential Facilities (adding 12VAC35-46-10 through 12VAC35-46-1140).

Statutory Authority: §§ 37.2-203 and 37.2-408 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on July 22, 2009.

Effective Date: August 6, 2009.

Agency Contact: Leslie Anderson, Director of the Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 371-6885, FAX (804) 692-0066, or email leslie.anderson@co.dmhmrsas.virginia.gov.

Basis: The State Mental Health, Mental Retardation and Substance Abuse Services Board (effective July 1, 2009, name changes to Board of Behavioral Health and Developmental Services) has the authority to adopt these

regulations under § 37.2-408 of the Code of Virginia. This authority is mandatory. Chapter 873 of the 2008 Acts of Assembly eliminated the interdepartmental regulation of children's residential facilities and requires DMHMRSAS, the Department of Social Services, and Department of Juvenile Justice to regulate and license the children's facilities for which they are now the primary licensing agency. This legislation also requires the aforementioned agencies to promulgate regulations to implement the provisions of the legislation no later than October 31, 2009.

Purpose: The 2008 Virginia General Assembly passed legislation eliminating the interdepartmental regulatory process and mandated new regulations be promulgated by all the involved agencies, including DMHMRSAS, to implement this change by October 31, 2009. This regulatory action is essential to ensure the continuity of regulatory oversight and the protection of the health, safety, and welfare of children with mental illness, mental retardation, substance abuse, or brain injury who receive services in facilities subject to licensing under the interdepartmental or core regulations, 22VAC42-10. The replacement regulations have been developed to afford the primary regulatory authority to DMHMRSAS to implement the same licensing requirements that have governed these facilities under the interdepartmental regulations. These facilities would now have DMHMRSAS as the single licensing agency, as required by the law. The implementation of these regulations will allow DMHMRSAS and the state MHMRSAS board to comply with the essential purpose, intent, and oversight responsibilities within the timeframe imposed by the law.

Rationale for Using Fast-Track Process: The replacement regulations simply restate and consolidate the relevant parts of the current interdepartmental or core regulations and the existing mental health module into a new single set of regulations. The replacement regulations will not alter the licensing requirements for providers that are governed by the current regulations or impact the existing licensing process for these providers. Therefore, these regulations are not expected to be controversial and are qualified for consideration under the fast-track process. In addition, the regulations just went through a comprehensive revision that went into effect in December 2007. The shortened legislative deadline made it difficult to promulgate these regulations under anything but the fast-track process.

Substance: There are no new substantial provisions included in the proposed regulations. The proposed replacement regulations enable DMHMRSAS to fulfill its statutory responsibility for licensing and regulating children's residential facilities that provide mental health, mental retardation, substance abuse, and brain injury services for children. These service providers are now subject to the same regulatory provisions and oversight under the interdepartmental regulations 22VAC42-10 and the mental health module 12VAC35-45.

Issues: The primary advantage of regulatory action for the public and providers is that it will provide a single comprehensive set of regulatory and licensing requirements for children's residential facilities that provide mental health, mental retardation, substance abuse, and brain injury services. This should simplify the requirements and make them easier to understand for those individuals affected by the regulations. Moreover, this action will not impose any new requirements and facilitate the transition and orientation to the new regulations when they become effective.

The proposed regulatory action will enable DMHMRSAS and the state MHMRSAS board to comply with the requirements of Chapter 873 of the 2008 Virginia Acts of Assembly in accordance with the timeframe imposed by the law. The new regulations will consolidate all of the regulatory provisions and facilitate the inspection and oversight functions for department staff.

There are no known disadvantages associated with this regulatory action.

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

Summary of the Proposed Amendments to Regulation. The proposed regulations merely restate the provisions of the repealed interdepartmental regulation of children's residential facilities and move existing mental health module into a new single set of regulations.

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

Estimated Economic Impact. Previously, children's residential facilities were regulated by multiple agencies under interdepartmental regulations of children's residential facilities. In addition to the interdepartmental regulations, Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) currently has a mental health module to cover mental health specific aspects of regulating these facilities. However, Chapter 873 of the 2008 Acts of Assembly eliminated interdepartmental regulations and mandated all of the agencies involved to implement their own regulations by October 2009.

The proposed regulations merely restate the provisions of the repealed interdepartmental regulations in the Virginia Administrative Code allocated to DMHMRSAS and move the existing mental health module that apply to the same facilities into a new single set of regulations. Since there is no change in the requirements that apply to facilities, no significant economic effect is expected other than improving the clarity of the regulations and possibly avoiding some potential communication costs.

Businesses and Entities Affected. There are currently 174 providers regulated under these rules.

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. The proposed changes do not create any costs or other affects on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed changes do not create any adverse impact on small businesses.

Real Estate Development Costs. The proposed changes do not create any 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.

Summary:

This action allows the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) to regulate and license the children's group homes and residential facilities for which it is now the primary licensing agency. The replacement regulations incorporate and consolidate existing applicable regulations 22VAC42-11, Standards for Interdepartmental Regulation of Children's Residential Facilities (known as the "core" regulations), and the existing "mental health module" regulations 12VAC35-45. The 2008 Virginia General Assembly eliminated the interdepartmental regulation of children's residential facilities and required DMHMRSAS, the Department of Social Services, and the Department of Juvenile Justice to license specific children's residential facilities for which they are now the primary licensing agency. This 2008 legislation requires each of the aforementioned agencies to adopt regulations to replace and restate the existing interdepartmental or core regulations.

The proposed replacement regulations consist of regulatory provisions that are now implemented by the department for facilities that provide mental health, mental retardation, substance abuse, and brain injury residential services for children. The State Mental Health, Mental Retardation and Substance Abuse Services Board adopted amended core regulations 22VAC42-11 in 2007 pursuant to the standard public process required by the Virginia Administrative Process Act. The proposed replacement regulations simply restate the relevant provisions from the existing interdepartmental regulations and consolidate them with the existing "mental health module" into a new single set of regulations.

CHAPTER 46
REGULATIONS FOR CHILDREN'S RESIDENTIAL FACILITIES

Part I
General Provisions

12VAC35-46-10. Definitions.

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

"Allegation" means an accusation that a facility is operating without a license or receiving public funds for services it is not certified to provide.

"Annual" means within 13 months of the previous event or occurrence.

"Applicable state regulation" means any regulation that the department determines applies to the facility. The term includes, but is not necessarily limited to, regulations promulgated by the Departments of Education, Health, Housing and Community Development, or other state agencies.

"Applicant" means the person, corporation, partnership, association, or public agency that has applied for a license.

"Aversive stimuli" means the physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper sauce or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the resident but in no case shall the term "aversive stimuli" include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the resident.

"Behavior support" means those principles and methods employed by a provider to help a child achieve positive behavior and to address and correct a child's inappropriate behavior in a constructive and safe manner in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security, and the child's individualized service plan.

"Behavior support assessment" means identification of a resident's behavior triggers, successful intervention strategies, anger and anxiety management options for calming, techniques for self-management, and specific goals that address the targeted behaviors that lead to emergency safety interventions.

"Body cavity search" means any examination of a resident's rectal or vaginal cavities, except the performance of medical procedures by medical personnel.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include, but are not limited to, anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders, or injuries induced by birth trauma.

"Brain Injury Waiver" means a Virginia Medicaid home and community-based waiver for persons with brain injury approved by the Centers for Medicare and Medicaid Services.

"Care" or "treatment" means a set of individually planned interventions, training, habilitation, or supports that help a resident obtain or maintain an optimal level of functioning, reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes or conditions specific to physical, mental, behavioral, or social functioning.

"Child" means any person legally defined as a child under state law. The term includes residents and other children coming into contact with the resident or facility (e.g., visitors). When the term is used, the requirement applies to every child at the facility regardless of whether the child has been admitted to the facility for care (e.g., staff/child ratios apply to all children present even though some may not be residents).

"Child-placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of social services authorized to place children in foster homes or adoptive homes.

"Children's residential facility" or "facility" means a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children separated from their legal guardians and is required to be licensed or certified by the Code of Virginia except:

1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and that receives public funds; and

2. Acute-care private psychiatric hospitals serving children that are licensed by the Department of Behavioral Health and Developmental Services under the Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver, and Residential Brain Injury Services, 12VAC35-105.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services or his authorized agent.

"Complaint" means an accusation against a licensed facility regarding an alleged violation of regulations or law.

"Contraband" means any item prohibited by law or by the rules and regulations of the department, or any item that conflicts with the program or safety and security of the facility or individual residents.

"Corporal punishment" means punishment administered through the intentional inflicting of pain and discomfort to the body through actions such as, but not limited to (i) striking or hitting with any part of the body or with an implement; or (ii) any similar action that normally inflicts pain or discomfort.

"Counseling" means certain formal treatment interventions such as individual, family, and group modalities, that provide for support and problem solving. Such interventions take place between provider staff and resident families or groups and are aimed at enhancing appropriate psychosocial functioning or personal sense of well-being.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the department. A corrective action plan must be completed within a specified time.

"Crisis" means any acute emotional disturbance in which a resident presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration caused by acute mental distress, behavioral or situational factors, or acute substance abuse related problems.

"Crisis intervention" means those activities aimed at the rapid management of a crisis.

"Day" means calendar day unless the context clearly indicates otherwise.

"Department" means the Department of Behavioral Health and Developmental Services (DBHDS).

"DOE" means the Department of Education.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Emergency does not include regularly scheduled time off for permanent staff or other situations that should reasonably be anticipated.

"Emergency admission" means the sudden, unplanned, unexpected admittance of a child who needs immediate care or a court-ordered placement.

"Goal" means expected results or conditions that usually involve a long period of time and that are written in behavioral terms in a statement of relatively broad scope. Goals provide guidance in establishing specific short-term objectives directed toward the attainment of the goal.

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability, and has a history or pattern of behavior that demonstrates that the individual is suitable and able to care for, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group home" means a children's residential facility that is a community-based, homelike single dwelling, or its acceptable equivalent, other than the private home of the operator, and serves up to 12.

"Health record" means the file maintained by the provider that contains personal health information.

"Human research" means any systematic investigation including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).

"Immediately" means directly without delay.

"Independent living program" means a competency-based program that is specifically approved by the department to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.

"Individualized service plan" means a written plan of action developed and modified at intervals to meet the needs of a specific resident. It specifies measurable short and long-term goals, objectives, strategies, and time frames for reaching the goals and the individuals responsible for carrying out the plan.

"Intellectual disability" means mental retardation.

"Legal guardian" means the natural or adoptive parents or other person, agency, or institution that has legal custody of a child.

"License" means a document verifying approval to operate a children's residential facility and that indicates the status of the facility regarding compliance with applicable state regulations.

"Live-in staff" means staff who are required to be on duty for a period of 24 consecutive hours or more during each work week.

"Living unit" means the space in which a particular group of children in care of a residential facility reside. A living unit contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents of the unit. Depending upon its design, a building may contain one living unit or several separate living units.

"Mechanical restraint" means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.

"Medication" means prescribed and over-the-counter drugs.

"Medication administration" means the direct application of medications by injection, inhalation, or ingestion or any other means to a resident by (i) persons legally permitted to administer medications; or (ii) the resident at the direction and in the presence of persons legally permitted to administer medications.

"Medication error" means an error made in administering a medication to a resident including the following: (i) the wrong medication is given to the resident; (ii) the wrong resident is given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to the resident. A medication error does not include a resident's refusal of offered medication.

"Mental retardation" ("intellectual disability") means a 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 as conceptual, social, and practical adaptive skills

(§ 37.2-100 of the Code of Virginia). According to the American Association of Intellectual Disabilities (AAID) definition, these impairments should be assessed in the context of the individual's environment, considering cultural and linguistic diversity as well as differences in communication, and sensory motor and behavioral factors. Within an individual limitations often coexist with strengths. The purpose of describing limitations is to develop a profile of needed supports. With personalized supports over a sustained period, the functioning of an individual will improve. In some organizations the term "intellectual disability" is used instead of "mental retardation."

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury, that affect an individual's ability to function successfully in the community.

"Objective" means expected short-term results or conditions that must be met in order to attain a goal. Objectives are stated in measurable, behavioral terms and have a specified time for achievement.

"On-duty" means that period of time during which a staff person is responsible for the supervision of one or more children.

"On-site" means services that are delivered by the provider and are an integrated part of the overall service delivery system.

"Parent" means a natural or adoptive parent or surrogate parent appointed pursuant to DOE's regulations governing special education programs for students with disabilities." "Parent" means either parent unless the facility has been provided documentation that there is a legally binding instrument, a state law, or court order governing such matters as divorce, separation, or custody, that provides to the contrary.

"Pat down" means a thorough external body search of a clothed resident.

"Personal health information" means oral, written, or otherwise recorded information that is created or received by an entity relating to either an individual's physical or mental health or the provision of or payment for health care to an individual.

"Placement" means an activity by any person that provides assistance to a parent or legal guardian in locating and effecting the movement of a child to a foster home, adoptive home, or children's residential facility.

"Premises" means the tracts of land on which any part of a residential facility for children is located and any buildings on such tracts of land.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) residential services to children with mental illness, mental retardation (intellectual disability), or substance abuse; or (ii) residential services for persons with brain injury.

"Record" means up-to-date written or automated information relating to one resident. This information includes social data, agreements, all correspondence relating to the care of the resident, service plans with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.

"Resident" means a person admitted to a children's residential facility for supervision, care, training, or treatment on a 24-hour per day basis.

"Residential treatment program" means 24-hour, supervised, medically necessary, out-of-home programs designed to provide necessary support and address mental health, behavioral, substance abuse, cognitive, or training needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services include, but shall not be limited to, assessment and evaluation, medical treatment (including medication), individual and group counseling, neurobehavioral services, and family therapy necessary to treat the child. The service provides active treatment or training beginning at admission related to the resident's principle diagnosis and admitting symptoms. These services do not include interventions and activities designed only to meet the supportive nonmental health special needs including, but not limited to, personal care, habilitation, or academic educational needs of the resident.

"Respite care facility" means a facility that is specifically approved to provide short-term, periodic residential care to children accepted into its program in order to give the parents or legal guardians temporary relief from responsibility for their direct care.

"Rest day" means a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the facility.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the

administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Routine admission" means the admittance of a child following evaluation of an application for admission and execution of a written placement agreement.

"Rules of conduct" means a listing of a facility's rules or regulations that is maintained to inform residents and others about behaviors that are not permitted and the consequences applied when the behaviors occur.

"Sanitizing agent" means any substance approved by the Environmental Protection Agency to destroy bacteria.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person by physically blocking the door, or by any other physical or verbal means so that the individual cannot leave it.

"Self-admission" means the admittance of a child who seeks admission to a temporary care facility as permitted by Virginia statutory law without completing the requirements for "routine admission."

"Serious incident" means:

1. Any accident or injury requiring medical attention by a physician;

2. Any illness that requires hospitalization;

3. Any overnight absence from the facility without permission;

4. Any runaway; or

5. Any event that affects, or potentially may affect, the health, safety or welfare of any resident being served by the provider.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Service" or "services" means planned individualized interventions intended to reduce or ameliorate mental illness, mental retardation (intellectual disability), or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, mental retardation (intellectual disability), or substance abuse. Services include residential services, including those for persons with brain injury.

"Severe weather" means extreme environment or climate conditions that pose a threat to the health, safety, or welfare of residents.

"Social skills training" means activities aimed at developing and maintaining interpersonal skills.

"Strategies" means a series of steps and methods used to meet goals and objectives.

"Strip search" means a visual inspection of the body of a resident when that resident's outer clothing or total clothing is removed and an inspection of the removed clothing. Strip searches are conducted for the detection of contraband.

"Structured program of care" means a comprehensive planned daily routine including appropriate supervision that meets the needs of each resident both individually and as a group.

"Student/intern" means an individual who simultaneously is affiliated with an educational institution and a residential facility. Every student/intern who is not an employee is either a volunteer or contractual service provider depending upon the relationship among the student/intern, educational institution, and facility.

"Substantial compliance" means that while there may be noncompliance with one or more regulations that represents minimal risk, compliance clearly and obviously exists with most of the regulations as a whole.

"Systemic deficiency" means violations documented by the department that demonstrate defects in the overall operation of the facility or one or more of its components.

"Target population" means individuals with a similar, specified characteristic or disability.

"Temporary contract worker" means an individual who is not a direct salaried employee of the provider but is employed by a third party and is not a consistently scheduled staff member.

"Therapy" means provision of direct diagnostic, preventive, and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

"Time out" means the involuntary removal of a resident by a staff person from a source of reinforcement to a different open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services in those areas that show impairment as the result of mental disability, substance addiction, or physical impairment. In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.

"Variance" means temporary or permanent waiver of compliance with a regulation or portion of a regulation, or

permission to meet the intent of the regulation by a method other than that specified in the regulation, when the department, in its sole discretion, determines (i) enforcement will create an undue hardship and (ii) resident care will not be adversely affected.

"Volunteers" means any individual or group who of their own free will, and without any financial gain, provides goods and services to the program without compensation.

12VAC35-46-20. Service description and applications; required elements.

A. In order to determine whether an applicant is subject to these regulations, the applicant must submit a service description initially.

B. Each provider shall have a written service description that accurately describes its structured program of care and treatment consistent with the treatment, habilitation, or training needs of the residential population it serves. Service description elements shall include:

1. The mental health, substance abuse, mental retardation, or brain injury population it intends to serve;

2. The mental health, substance abuse, mental retardation, or brain injury interventions it will provide;

3. Provider goals;

4. Services provided; and

5. Contract services, if any.

C. The provider shall develop, implement, review, and revise its services according to the provider's mission and shall have that information available for public review.

D. Initial applications,

1. A completed application includes, but is not limited to, an initial application form; proposed working budget for the year showing projected revenue and expenses for the first year of operation and a balance sheet showing assets and liabilities; evidence of financial resources or a line of credit sufficient to cover estimated operating expenses for 90 days unless the facility is operated by a state or local government agency, board, or commission; a service description; a proposed staffing/supervision plan including the staff information sheet; copies of all job descriptions; evidence of the applicant's authority to conduct business in Virginia; a copy of the floor plan with dimensions of rooms; a certificate of occupancy; current health inspection; evidence of consultation with state or local fire prevention authorities; a list of board members, if applicable; three references for the applicant; and, if required by the department, references for three officers of the board if applicable. This information shall be submitted to and approved by the department in order for the application to be considered complete.

2. All initial applications that are not complete within 12 months shall be closed.

3. Facilities operated by state or local government agencies, boards, and commissions shall submit evidence of sufficient funds to operate including a working budget showing appropriated revenue and projected expenses for the coming year.

4. Currently licensed providers shall demonstrate that they are operating in substantial compliance with applicable regulations before new facilities operated by the same provider will be licensed.

E. Renewal applications. A completed application for renewal of a facility's license shall be submitted within 30 days after being notified to submit a renewal application.

12VAC35-46-30. The investigation.

The department shall arrange and conduct an on-site inspection of the facility and a thorough review of the services and an investigation of the character, reputation, status, and responsibility of the applicant.

12VAC35-46-40. Review of facilities.

A. Representatives of the department shall make announced and unannounced reviews during the effective dates of the license. The purpose of these reviews is to monitor compliance with applicable regulations.

B. Representatives of the department shall notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in children's residential facilities when such violations result in the lowering of the license to provisional status.

12VAC35-46-50. Posting of information.

A. Information concerning the application for initial licensure of children's residential facilities shall be posted to the department's website by locality.

B. An accurate listing of all licensed facilities including information on renewal, denial, or provisional licensure, and services shall be posted on the department's website by locality.

12VAC35-46-60. General requirements.

A. The provider shall demonstrate substantial compliance with these regulations to demonstrate that its program and physical plant provide reasonably safe and adequate care while approved plans of action to correct findings of noncompliance are being implemented and there are no noncompliances that pose an immediate and direct danger to residents.

B. Corporations sponsoring residential facilities for children shall maintain their corporate status in accordance with Virginia law.

C. The provider shall comply with the terms of its license.

D. A license is not transferable and automatically expires when there is a change of ownership or sponsorship.

E. The current license shall be posted at all times in a place conspicuous to the public.

F. A license shall not be issued to a facility when noncompliance poses an immediate danger to a resident's life, health, or safety.

G. Intermediate sanctions authorized by statute may be imposed at the discretion of the department.

H. Each provider shall self-report to the department within 10 days lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges against staff that may have been made relating to the health and safety or human rights of residents.

I. The provider shall comply with all other applicable federal, state, or local laws and regulations.

J. The provider's current policy and procedure manual shall be readily accessible to all staff.

K. Providers shall not engage in willful action or gross negligence that jeopardizes the care or protection of residents.

L. Providers shall not engage in conduct or practices that are in violation of statutes related to abuse or neglect of children.

M. Providers shall not deviate significantly from the program or services for which a license was issued without obtaining prior written approval from the department.

N. Providers shall not make false statements on the application for licensure or misrepresent facts in the application process.

12VAC35-46-70. Resident's rights.

Each provider shall guarantee resident rights as outlined in § 37.2-400 of the Code of Virginia and in 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 (12VAC35-115).

12VAC35-46-80. Written corrective action plans.

A. If there is noncompliance with applicable regulations during an initial or ongoing review or investigation, the department shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan.

B. The provider shall submit to the department and implement a written corrective action plan for each regulation for which the provider is found to be in noncompliance.

C. The corrective action plan shall include a:

1. Description of each corrective action to be taken to correct the noncompliance and to prevent reoccurrence in the future and the person responsible for implementation;

2. Date of completion for each action; and

3. Signature of the person responsible for oversight of the implementation of the pledged corrective action.

D. The provider shall submit the corrective action plan to the department within 15 business days of the issuance of the licensing report. Extensions may be granted by the department when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action plan shall be required if the department determines that the violations pose a threat to the health, safety, or welfare of residents.

E. A corrective action plan shall be approved by the department. The provider shall have an additional 10 business days to submit a revised corrective action plan after receiving a notice that the plan submitted has not been approved.

12VAC35-46-90. Licenses.

A. A conditional license shall be issued to a new provider that demonstrates compliance with administrative and policy requirements but has not demonstrated compliance with all of these regulations. A conditional license shall not exceed six months, but may be renewed, not to exceed 12 successive months for all conditional licenses and renewals combined.

B. A provisional license may be issued to a provider that has demonstrated an inability to maintain compliance with these regulations or other applicable regulations, has violations of licensing regulations that pose a threat to the health or safety of residents being served, or has two or more systemic deficiencies.

1. A provisional license may be issued at any time.

2. The term of a provisional license may not exceed six months unless allowed by the Code of Virginia.

3. A provisional license may be renewed, but a provisional license and any renewals shall not exceed 12 successive months for all provisional licenses and renewals combined.

C. An annual license:

1. Shall be issued when the provider applies for renewal while holding a conditional or provisional license or certificate and substantially meets or exceeds the requirements of these regulations and other regulations and statutes.

2. May be issued at any time if the provider has received one systemic deficiency.

3. May be renewed, but an annual license or certificate and any renewals thereof shall not exceed a period of 36 successive months for all annual licenses and renewals combined.

D. A triennial license shall be issued when the provider:

1. Applies for renewal while holding an annual or triennial license; and

2. Substantially meets or exceeds the requirements of these regulations and other applicable regulations and statutes.

E. The term of a facility's license may be modified at any time during the licensure period based on a change in the facility's compliance with these regulations and other applicable statutes and regulations.

12VAC35-46-100. Application fees.

A. There shall be a $500 nonrefundable initial application fee. If the application is closed, denied, or withdrawn all subsequent initial applications shall require another $500 fee.

B. There shall be a $100 nonrefundable renewal application fee.

C. A renewal fee shall not be charged to providers directly following the issuance of a conditional license.

D. The application fee shall not apply to state or local government-owned, operated, or contracted facilities.

E. Application fees shall be used for the development and delivery of training for providers and staff of children's residential facilities and regulators of these facilities.

12VAC35-46-110. Modification.

A. The conditions of a license may be modified during the term of the license with respect to the capacity, residents' age range, facility location, residents' gender, or changes in the services. Limited modifications may be approved during the conditional licensure period.

B. The provider shall submit a written report of any contemplated changes in operation that would affect the terms of the license or the continuing eligibility for licensure to the department.

C. A change shall not be implemented prior to approval by the department. The provider shall be notified in writing within 60 days following receipt of the request as to whether the modification is approved or a new license is required.

12VAC35-46-120. Denial.

A. An application for licensure may be denied when the applicant:

1. Violates any provision of applicable laws or regulations made pursuant to such laws;

2. Has a founded disposition of child abuse or neglect after the appeal process has been completed;

3. Has been convicted of a crime listed in § 37.2-416 or 63.2-1726 of the Code of Virginia;

4. Has made false statements on the application or misrepresentation of facts in the application process;

5. Has not demonstrated good character and reputation as determined through references, background investigations, driving records, and other application materials;

6. Has a history of adverse licensing actions or sanctions;

7. Permits, aids, or abets in the commission of an illegal act in services delivered by the provider; or

8. Engages in conduct or practices detrimental to the welfare of any individual receiving services from the provider.

B. If denial of a license is recommended, the facility shall be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process.

12VAC35-46-130. Revocation.

A. A license may be revoked when the provider:

1. Violates any provision of applicable laws or regulations;

2. Engages in conduct or practices that are in violation of statutes related to abuse or neglect of children;

3. Deviates significantly from the program or services for which a license was issued without obtaining prior written approval from the department or fails to correct such deviations within the specified time;

4. Permits, aids, or abets the commission of an illegal act in services delivered by the provider; or

5. Engages in conduct or practices detrimental to the welfare of any individual receiving services.

B. If revocation of a license is recommended, the facility shall be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process.

12VAC35-46-140. Summary suspension.

A. In conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents, the commissioner may issue an order of summary suspension of the license to operate a children's residential facility when he believes the operation of the facility should be suspended during the pendency of such proceeding.

B. Prior to the issuance of an order of summary suspension, the department shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a hearing officer. The department shall schedule the time, date, and location of the administrative hearing with the hearing officer.

C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the facility as soon as practicable. The order shall set forth:

1. The time, date, and location of the hearing;

2. The procedures for the hearing;

3. The hearing and appeal rights; and

4. Facts and evidence that formed the basis for the order of summary suspension.

D. The hearing shall take place within three business days of the issuance of the order of summary suspension.

E. The department shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to require the facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.

F. The administrative hearing officer shall provide written findings and conclusions, together with a recommendation as to whether the license should be summarily suspended, to the commissioner within five business days of the hearing.

G. The commissioner shall issue a final order of summary suspension or make a determination that the summary suspension is not warranted based on the facts presented and the recommendation of the hearing officer within seven business days of receiving the recommendation of the hearing officer.

H. The commissioner shall issue and serve on the children's residential facility or its designee by personal service or by certified mail, return receipt requested, either:

1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer's recommendations and (ii) notice that the children's residential facility may appeal the commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order; or

2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.

I. The facility may appeal the commissioner's decision on the summary suspension to the appropriate circuit court no more than 10 days after issuance of the final order.

J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension.

K. At the time of the issuance of the order of summary suspension, the department shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for residents, and ensure that parents and guardians are informed of the pending action.

12VAC35-46-150. Variances.

A. Any request for a variance shall be submitted in writing to the department and shall include:

1. Justification why enforcement of the regulation would create an undue hardship;

2. How the facility can comply with the intent of the regulation; and

3. Justification why resident care would not be adversely affected if the variance was granted.

B. A variance shall not be implemented prior to approval of the department.

12VAC35-46-160. Investigation of complaints and allegations.

The department is responsible for complete and prompt investigation of all complaints and allegations made against providers, and for notification of the appropriate persons or agencies when removal of residents may be necessary. Suspected criminal violations shall be reported to the appropriate law-enforcement authority.

Part II
Administration

12VAC35-46-170. Governing body.

A. The provider shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee.

B. The provider shall clearly identify any governing board, body, entity, or person to whom it delegates the legal responsibilities and duties of the provider.

12VAC35-46-180. Responsibilities of the provider.

A. The provider shall appoint a qualified chief administrative officer to whom it delegates, in writing, the authority and responsibility for administrative direction of the facility.

B. The provider shall develop and implement a written decision-making plan that shall provide for a staff person with the qualifications of the chief administrative officer or program director to be designated to assume the temporary responsibility for the operation of the facility. Each plan shall include an organizational chart.

C. The provider shall develop a written statement of the objectives of the facility including a description of the target population and the programs to be offered.

D. The provider shall develop and implement written policies and procedures to monitor and evaluate service quality and effectiveness on a systematic and on-going basis. The provider shall implement improvements when indicated.

12VAC35-46-190. Fiscal accountability.

A. Facilities operated by corporations, unincorporated organizations or associations, individuals, or partnerships shall prepare at the end of each fiscal year:

1. An operating statement showing revenue and expenses for the fiscal year just ended;

2. A working budget showing projected revenue and expenses for the next fiscal year that gives evidence that there are sufficient funds to operate; and

3. A balance sheet showing assets and liabilities for the fiscal year just ended.

B. There shall be a system of financial recordkeeping that shows a separation of the facility's accounts from all other records.

C. The provider shall develop and implement written policies and procedures that address the day-to-day handling of facility funds to include:

1. Handling of deposits;

2. Writing of checks; and

3. Handling of petty cash.

12VAC35-46-200. Insurance.

A. The provider shall maintain liability insurance covering the premises and the facility's operations.

B. The provider shall provide documentation that all vehicles used to transport residents are insured, including vehicles owned by staff.

C. The members of the governing body and staff who have been authorized to handle the facility's or residents' funds shall be bonded or otherwise indemnified against employee dishonesty.

12VAC35-46-210. Fundraising.

The provider shall not use residents in its fundraising activities without written permission of the legal guardian and the permission of residents 14 years or older.

12VAC35-46-220. Weapons.

The provider shall develop and implement written policies and procedures governing the possession and use of firearms, pellet guns, air guns, and other weapons on the facility's premises and during facility-related activities. The policy shall provide that no firearms, pellet guns, air guns, or other weapons shall be permitted on the premises or at facility-sponsored activities unless the weapons are:

1. In the possession of licensed security personnel or law-enforcement officers;

2. Kept securely under lock and key; or

3. Used by a resident with the legal guardian's permission under the supervision of a responsible adult in accord with policies and procedures developed by the facility for the weapons' lawful and safe use.

12VAC35-46-230. Relationship to the department.

A. The provider shall submit or make available to the department such reports and information as the department may require to establish compliance with these regulations and other applicable regulations and statutes.

B. The governing body or its official representative shall notify the department within five working days of any change in administrative structure or newly hired chief administrative officer or program director.

12VAC35-46-240. Facilities serving persons over the age of 17 years.

Facilities that are approved to serve persons over the age of 17 years shall comply with these regulations for all occupants regardless of age, except when it is determined by the department that housing, programs, services, and supervision for such persons are provided separately from those for the other residents.

12VAC35-46-250. Health information.

A. Health information required by this section shall be maintained for each staff member and for each individual who resides in a building occupied by residents, including each person who is not a staff member or resident of the facility. Health information shall be handled, maintained, and stored in a fashion that maintains confidentiality of the information at all times.

B. Tuberculosis evaluation.

1. At the time of hire or residency at the facility, each individual shall submit the results of a screening assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health. The screening assessment shall be no older than 30 days.

2. Each individual shall annually submit the results of a screening assessment, documenting that the individual is free of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the

elements of a current screening form published by the Virginia Department of Health.

12VAC35-46-260. Physical or mental health of personnel.

A. The provider or the department may require a report of examination by a licensed physician or mental health professional when there are indications that an individual's physical, mental, or emotional health may jeopardize the care of residents.

B. An individual who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may jeopardize the safety of residents or that would prevent the performance of duties shall be removed immediately from contact with residents and food served to residents until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

12VAC35-46-270. Qualifications.

A. Regulations establishing minimum position qualifications shall be applicable to all providers. In lieu of the minimum position qualifications contained in this chapter, providers subject to (i) the rules and regulations of the Virginia Department of Human Resource Management or (ii) the rules and regulations of a local government personnel office may develop written minimum entry-level qualifications in accord with the rules and regulations of the supervising personnel authority.

B. A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in these regulations after December 28, 2007, shall:

1. Meet the qualifications of the position or positions;

2. Fully comply with all applicable regulations for each function; and

3. Demonstrate a working knowledge of the policies and procedures that are applicable to his specific position or positions.

C. When services or consultations are obtained on a contractual basis they shall be provided by professionally qualified personnel.

12VAC35-46-280. Job descriptions.

A. There shall be a written job description for each position that, at a minimum, includes the:

1. Job title;

2. Duties and responsibilities of the incumbent;

3. Job title of the immediate supervisor; and

4. Minimum education, experience, knowledge, skills, and abilities required for entry-level performance of the job.

B. A copy of the job description shall be given to each person assigned to a position at the time of employment or assignment.

12VAC35-46-290. Written personnel policies and procedures.

A. The provider shall have and implement provider approved written personnel policies and make its written personnel policies readily accessible to each staff member.

B. The provider shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each position possess the education, experience, knowledge, skills, and abilities specified in the job description for the position.

12VAC35-46-300. Personnel records.

A. Separate up-to-date written or automated personnel records shall be maintained for each employee, student/intern, volunteer, and contractual service provider for whom background investigations are required by Virginia statute. Content of personnel records of volunteers, students/interns, and contractual service providers may be limited to documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations.

B. The records of each employee shall include:

1. A completed employment application form or other written material providing the individual's name, address, phone number, and social security number or other unique identifier;

2. Educational background and employment history;

3. Written references or notations of oral references;

4. Reports of required health examinations;

5. Annual performance evaluations;

6. Date of employment for each position held and separation;

7. Documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations;

8. Documentation of educational degrees and of professional certification or licensure;

9. Documentation of all training required by these regulations and any other training received by individual staff; and

10. A current job description.

C. Personnel records, including separate health records, shall be retained in their entirety for at least three years after separation from employment, contractual service, student/intern, or volunteer service.

12VAC35-46-310. Staff development.

A. Required initial training.

1. Within seven days following their begin date, each staff member responsible for supervision of children shall receive basic orientation to the facility's behavior intervention policies, procedures, and techniques regarding less restrictive interventions, timeout, and physical restraint.

2. Within 14 days following an individual's begin date, and before an individual is alone supervising children, the provider shall conduct emergency preparedness and response training that shall include:

a. Alerting emergency personnel and sounding alarms;

b. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);

c. Using, maintaining, and operating emergency equipment;

d. Accessing emergency information for residents including medical information; and

e. Utilizing community support services.

3. Within 14 days following their begin date, new employees, employees transferring from other facilities operated by the same provider, relief staff, volunteers, and students/interns shall be given orientation and training regarding:

a. The objectives of the facility;

b. Practices of confidentiality;

c. The decision-making plan;

d. These regulations including the prohibited actions as outlined in this regulation; and

e. Other policies and procedures that are applicable to their positions, duties, and responsibilities.

4. Within 30 days following their begin date, all staff working with residents shall be enrolled in a standard first aid class and in a cardiopulmonary resuscitation class facilitated by the American Red Cross or other recognized authority, unless the individual is currently certified in first aid and cardiopulmonary resuscitation.

5. Within 30 days following their begin date, all staff working with residents shall be trained in child abuse and neglect, mandatory reporting, maintaining appropriate professional relationships, and interaction among staff and residents, and suicide prevention.

6. Within 30 days following their begin date, all staff shall be trained on the facility's policies and procedures regarding standard precautions.

7. Within 30 days following their begin date, all staff shall be trained on appropriate siting of children's residential facilities, and good neighbor policies and community relations.

8. Before administering medication, all staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications.

9. All staff shall be trained in any area of quality improvement as identified from the results of the quality improvement plan.

B. Required annual retraining.

1. All employees, contractors, students/interns, and volunteers shall complete an annual refresher emergency preparedness and response training that shall include:

a. Alerting emergency personnel and sounding alarms;

b. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);

c. Using, maintaining, and operating emergency equipment;

d. Accessing emergency information for residents including medical information; and

e. Utilizing community support services.

2. All staff who administer medication shall complete annual refresher medication training.

3. All child care staff shall receive annual retraining on the provider's behavior supports and timeout policies and procedures.

4. All staff working with residents shall receive annual retraining in child abuse and neglect, mandatory reporting, maintaining appropriate professional relationships, and interaction among staff and residents, and suicide prevention.

5. All staff shall receive annual retraining on the provider's policies and procedures regarding standard precautions.

C. Each full-time staff person who works with residents shall complete an additional 15 hours of annual training applicable to their job duties.

D. Providers shall develop and implement written policies and procedures to ensure that part-time staff receive training applicable to their positions.

E. Training provided shall be comprehensive and based on the needs of the population served to ensure that staff have the competencies to perform their jobs.

12VAC35-46-320. Staff supervision.

The provider shall develop and implement written policies and procedures regarding the supervision of employees, volunteers, contractors, and students/interns. These policies and procedures shall include:

1. Type of supervision;

2. Frequency of supervision; and

3. How the supervision will be documented.

12VAC35-46-330. The applicant.

As a condition of initial licensure and, if appropriate, license renewal, each applicant shall:

1. Provide documentation that they have been trained on appropriate siting of children's residential facilities, and good neighbor policies and community relations;

2. Be interviewed in person by the department to determine the qualifications of the owner or operator as set out in these regulations. Should the applicant not be qualified to perform the duties of the chief administrative officer, the applicant shall hire an individual with the qualifications, as set out in these regulations, to perform the duties of the chief administrative officer; and

3. Provide evidence of having relevant prior experience.

12VAC35-46-340. The chief administrative officer.

A. The chief administrative officer shall have the following responsibilities:

1. Responsibility for compliance with these regulations and other applicable regulations;

2. Responsibility for all personnel;

3. Responsibility for overseeing the facility operation in its entirety, including the approval of the design of the structured program of care and its implementation; and

4. Responsibility for the facility's financial integrity.

B. A chief administrative officer appointed after December 28, 2007, shall have at least:

1. A master's degree in social work, psychology, counseling, nursing, or administration and a combination of two years professional experience working with children and in administration and supervision;

2. A baccalaureate degree in social work, psychology, counseling, nursing, or administration and three years of combined professional experience with children, and in administration and supervision; or

3. A baccalaureate degree and a combination of four years professional experience in a children's residential facility and in administration and supervision.

C. Any applicant for the chief administrative officer position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the chief administrative officer:

1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and

2. Documentation of prior relevant experience.

12VAC35-46-350. Program director.

A. The facility's program shall be directed by one or more qualified persons.

B. Persons directing programs shall be responsible for the development and implementation of the programs and services offered by the facility, including overseeing assessments, service planning, staff scheduling, and supervision.

C. Persons directing programs of a facility licensed to care for 13 or more residents shall be full-time, qualified staff members.

D. A person appointed after December 28, 2007, to direct programs shall have at least:

1. A master's degree in social work, psychology, counseling, or nursing and a combination of two years professional experience with children in a children's residential facility and in administration or supervision;

2. A baccalaureate degree in social work, psychology, counseling, or nursing and a combination of three years professional experience with children in a children's residential facility and in administration or supervision;

3. A baccalaureate degree and a combination of four years of professional experience with children in a children's residential facility and in administration or supervision; or

4. A license issued by the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism.

E. For services providing brain injury services, a person appointed to direct programs shall have a master's degree in psychology, or be a nurse licensed in Virginia, a rehabilitation professional licensed in Virginia, or a Certified Brain Injury Specialist with at least one year of clinical experience working with individuals with brain injury. Program directors who hold a bachelor's degree in the field of institutional management, social work, education, or other allied discipline shall have a minimum of two years of experience working with individuals with brain injury.

F. Any applicant for the program director position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the program director:

1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and

2. Documentation of prior relevant experience.

12VAC35-46-360. Case manager.

A. Case managers shall have the responsibility for coordination of all services offered to each resident.

B. Case managers shall have:

1. A master's degree in social work, psychology, or counseling;

2. A baccalaureate degree in social work or psychology with documented field work experience and shall be supervised by the program director or other staff employed by the provider with the same qualifications; or

3. A baccalaureate degree and three years of professional experience working with children.

12VAC35-46-370. Child care supervisor.

A. Child care supervisors shall have responsibility for the:

1. Development of the daily living program within each child care unit; and

2. Orientation, training, and supervision of direct care workers.

B. Child care supervisors shall have:

1. A baccalaureate degree in social work or psychology and two years of professional experience working with children one year of which must have been in a residential facility for children;

2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years professional experience working with children with at least two years in a residential facility for children; or

3. A combination of education and experience working with children as approved by the department.

12VAC35-46-380. Child care staff.

A. The child care worker shall have responsibility for guidance and supervision of the children to whom he is assigned including:

1. Overseeing physical care;

2. Development of acceptable habits and attitudes;

3. Management of resident behavior; and

4. Helping to meet the goals and objectives of any required individualized service plan.

B. A child care worker and a relief child care worker shall:

1. Have a baccalaureate degree in human services;

2. Have an associates degree and three months experience working with children; or

3. Be a high school graduate or have a G.E.D. and have six months of experience working with children.

C. Child care staff with a high school diploma or G.E.D. with no experience working with children may not work alone, but may be employed as long as they are working directly with the chief administrative officer, program director, case manager, child care supervisor, or a child care worker with one or more years of professional experience working with children.

D. Child care staff in brain injury residential services shall have two years experience working with children with disabilities.

E. An individual hired, promoted, demoted, or transferred to a child care worker's position after August 6, 2009, shall be at least 21 years old, except as provided in 12VAC35-46-270 A.

F. The provider shall not be dependent on temporary contract workers to provide resident care.

12VAC35-46-390. Relief staff.

Qualified relief staff shall be employed as necessary to meet the needs of the programs and services offered and to maintain a structured program of care in accordance with these regulations.

12VAC35-46-395. Additional requirements for residential facilities for individuals with brain injury.

The provider of brain injury services shall employ or contract with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with initial assessments, development of individualized service plans, crises, staff training, and service design.

12VAC35-46-400. Volunteers and student/interns.

A. A facility that uses volunteers or students/interns shall develop and implement written policies and procedures governing their selection and use.

B. The facility shall not be dependent upon volunteers or students/interns to provide basic services.

C. Responsibilities of volunteers and students/interns shall be clearly defined in writing.

D. Volunteers and students/interns shall have qualifications appropriate to the services they render.

12VAC35-46-410. Support functions.

A. Child care workers and other staff responsible for child care may assume the duties of nonchild care personnel only when these duties do not interfere with their child care responsibilities.

B. Residents shall not be solely responsible for support functions including, but not necessarily limited to, food service, maintenance of building and grounds, and housekeeping.

Part III
Residential Environment

12VAC35-46-420. Buildings, inspections and building plans.

A. All buildings and building related equipment shall be inspected and approved by the local building official. Approval shall be documented by a certificate of occupancy.

B. The facility shall document at the time of its original application evidence of consultation with state or local fire prevention authorities.

C. The facility shall document annually after the initial application that buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51).

D. At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by state or local health authorities, whose inspection and approval shall include:

1. General sanitation;

2. The sewage disposal system;

3. The water supply; and

4. Food service operations.

E. The buildings and physical environment shall provide adequate space and shall be of a design that is suitable to house the programs and services provided and meet specialized needs of the residents.

F. Building plans and specifications for new construction, change in use of existing buildings, and any structural modifications or additions to existing buildings shall be submitted to and approved by the department and by other appropriate regulatory authorities.

G. Swimming pools shall be inspected annually by the state or local health authorities or by a swimming pool business.

12VAC35-46-430. Heating systems, ventilation, and cooling systems.

A. Heat shall be evenly distributed in all rooms occupied by the residents such that a temperature no less than 68°F is maintained, unless otherwise mandated by state or federal authorities.

B. Natural or mechanical ventilation to the outside shall be provided in all rooms used by residents.

C. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F.

12VAC35-46-440. Lighting.

A. Artificial lighting shall be by electricity.

B. All areas within buildings shall be lighted for safety and the lighting shall be sufficient for the activities being performed.

C. Lighting in halls shall be adequate and shall be continuous at night.

D. Operable flashlights or battery-powered lanterns shall be available for each staff member on the premises between dusk and dawn to use in emergencies.

E. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

12VAC35-46-450. Plumbing.

A. Plumbing shall be maintained in good operational condition.

B. An adequate supply of hot and cold running water shall be available at all times.

C. Precautions shall be taken to prevent scalding from running water. Water temperatures shall be maintained between 100°F and 120°F.

12VAC35-46-460. Toilet facilities.

A. There shall be at least one toilet, one hand basin, and one shower or bathtub in each living unit.

B. There shall be at least one bathroom equipped with a bathtub in each facility.

C. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities licensed before July 1, 1981.

D. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981, except secure custody facilities. Facilities licensed after December 28, 2007, shall comply with the one-to-four ratio.

E. The maximum number of staff members on duty in the living unit shall be counted in determining the required number of toilets and hand basins when a separate bathroom is not provided for staff.

12VAC35-46-470. Personal necessities.

A. An adequate supply of personal necessities shall be available to the residents at all times for purposes of personal hygiene and grooming.

B. Clean, individual washcloths and towels shall be in good repair and available once each week and more often if needed.

C. When residents are incontinent or not toilet trained:

1. Provision shall be made for sponging, diapering, or other similar care on a nonabsorbent changing surface that shall be cleaned with warm soapy water after each use.

2. A covered diaper pail, or its equivalent, with leakproof disposable liners shall be used to dispose of diapers. If both cloth and disposable diapers are used, there shall be a diaper pail for each.

3. Adapter seats and toilet chairs shall be cleaned immediately after each use with appropriate cleaning materials.

4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting a child or themselves with toileting.

5. Appropriate privacy, confidentiality, and dignity shall be maintained for residents during toileting and diapering.

12VAC35-46-480. Sleeping areas.

A. When residents are four years of age or older, boys and girls shall have separate sleeping areas.

B. No more than four children shall share a bedroom or sleeping area.

C. Children who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking shall be provided with a planned, personalized means of effective egress for use in emergencies.

D. Beds shall be at least three feet apart at the head, foot, and sides and double-decker beds shall be at least five feet apart at the head, foot, and sides.

E. Sleeping quarters in facilities established, constructed, or structurally modified after July 1, 1981, shall have:

1. At least 80 square feet of floor area in a bedroom accommodating one person;

2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and

3. Ceilings with a primary height of at least 7-1/2 feet exclusive of protrusions, duct work, or dormers.

F. Each child shall have a separate, clean, comfortable bed equipped with a clean mattress, clean pillow, clean blankets, clean bed linens, and, if needed, a clean waterproof mattress cover.

G. Bed linens shall be changed at least every seven days and more often if needed.

H. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code (5VAC63).

I. Cribs shall be provided for residents under two years of age.

J. Each resident shall be assigned drawer space and closet space, or their equivalent, that is accessible to the sleeping area for storage of clothing and personal belongings except in secure custody facilities.

K. The environment of sleeping areas shall be conducive to sleep and rest.

12VAC35-46-490. Smoking prohibition.

Smoking shall be prohibited in living areas and in areas where residents participate in programs.

12VAC35-46-500. Residents' privacy.

A. When bathrooms are not designated for individual use:

1. Each toilet shall be enclosed for privacy; and

2. Bathtubs and showers shall provide visual privacy for bathing by use of enclosures, curtains, or other appropriate means.

B. Windows in bathrooms, sleeping areas, and dressing areas shall provide for privacy.

C. Every sleeping area shall have a door that may be closed for privacy or quiet and this door shall be readily opened in case of fire or other emergency.

D. Residents shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities. This section does not apply to medical personnel performing medical procedures, staff providing assistance to infants, or staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's record.

12VAC35-46-510. Audio and visual recordings.

Each provider shall have written policies and procedures regarding the photographing and audio or audio-video recordings of residents approved by the Office of Human Rights that shall ensure and provide that:

1. The written consent of the resident or the resident's legal guardian shall be obtained before the resident is photographed or recorded for research or provider publicity purposes.

2. No photographing or recording by provider staff shall take place without the resident or the resident's family or legal guardian being informed.

3. All photographs and recordings shall be used in a manner that respects the dignity and confidentiality of the resident.

12VAC35-46-520. Living rooms and indoor recreation space.

A. Each living unit shall have a living room, or other area for informal use, relaxation, and entertainment. The furnishings shall provide a comfortable, homelike environment that is appropriate to the ages of the residents.

B. All facilities shall have indoor recreation space that contains indoor recreation materials appropriate to the ages and interests of the residents.

C. Facilities licensed to care for 13 or more residents shall have indoor recreation space distinct from the living room. Recreation space is not required in every living unit.

12VAC35-46-530. Study space.

A. Facilities serving a school-age population shall provide study space. Study space may be assigned in areas used interchangeably for other purposes.

B. Study space shall be well lighted, quiet, and equipped with tables or desks and chairs.

12VAC35-46-540. Kitchen and dining areas.

A. Meals shall be served in areas equipped with sturdy tables and benches or chairs that are size and age appropriate for the residents.

B. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

C. Walk-in refrigerators, freezers, and other enclosures shall be equipped to permit emergency exits.

12VAC35-46-550. Laundry areas.

Appropriate space and equipment in good repair shall be provided if laundry is done at the facility.

12VAC35-46-560. Storage.

Space shall be provided for safe storage of items such as first aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials.

12VAC35-46-570. Staff quarters.

A. A separate, private bedroom shall be provided for staff and their families when a staff member is on duty for 24 consecutive hours or more.

B. A separate private bathroom shall be provided for staff and their families when there are more than four persons in the living unit and the staff person is on duty for 24 consecutive hours or more.

C. Staff and members of their families shall not share bedrooms with residents.

12VAC35-46-580. Office space.

Space shall be provided for administrative activities including, as appropriate to the program, confidential conversations and provision for storage of records and materials.

12VAC35-46-590. Building and grounds.

A. The facility's grounds shall be safe, properly maintained, and free of clutter and rubbish. The grounds include, but are not limited to, all areas where residents, staff, and visitors may reasonably be expected to have access, including roads, pavements, parking lots, open areas, stairways, railings, and potentially hazardous or dangerous areas.

B. The interior and exterior of all buildings shall be safe, properly maintained, clean, and in good working order. This includes, but is not limited to, required locks, mechanical devices, indoor and outdoor equipment, and furnishings.

C. Outdoor recreation space shall be available and appropriately equipped for the residents' use.

12VAC35-46-600. Equipment and furnishings.

A. All furnishings and equipment shall be safe, clean, and suitable to the ages and number of residents.

B. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which children sleep or participate in programs.

12VAC35-46-610. Housekeeping and maintenance.

A. All buildings shall be well ventilated and free of stale, musty, or foul odors.

B. Adequate provision shall be made for the collection and legal disposal of garbage and waste materials.

C. Buildings shall be kept free of flies, roaches, rats, and other vermin.

D. A sanitizing agent shall be used in the laundering of bed, bath, table, and kitchen linens.

12VAC35-46-620. Farm and domestic animals.

A. Horses and other animals maintained on the premises shall be quartered at a reasonable distance from sleeping, living, eating and food preparation areas, as well as a safe distance from water supplies.

B. Animals maintained on the premises shall be tested, inoculated, and licensed as required by law.

C. The premises shall be kept free of stray domestic animals.

D. Pets shall be provided with clean quarters and adequate food and water.

Part IV
Programs and Services

12VAC35-46-625. Minimum service requirements.

A. The provider shall have and implement written policies and procedures for the on-site provision of a structured program of care or treatment of residents with mental illness, mental retardation, substance abuse, or brain injury. The provision, intensity, and frequency of mental health, mental retardation, substance abuse, or brain injury interventions shall be based on the assessed needs of the resident. These interventions, applicable to the population served, shall include, but are not limited to:

1. Individual counseling;

2. Group counseling;

3. Training in decision making, family and interpersonal skills, problem solving, self-care, social, and independent living skills;

4. Training in functional skills;

5. Assistance with activities of daily living (ADL's);

6. Social skills training in therapeutic recreational activities, e.g., anger management, leisure skills education and development, and community integration;

7. Providing positive behavior supports;

8. Physical, occupational, and/or speech therapy;

9. Substance abuse education and counseling; and

10. Neurobehavioral services for individuals with brain injury.

B. Each provider shall have formal arrangements for the evaluation, assessment, and treatment of the mental health or brain injury needs of the resident.

C. The provider shall have and implement written policies and procedures that address the provision of:

1. Psychiatric care;

2. Family therapy; and

3. Staffing appropriate to the needs and behaviors of the residents served.

12VAC35-46-630. Acceptance of children.

Children shall be accepted only by court order or by written placement agreement with legal guardians.

12VAC35-46-640. Admission procedures.

A. The facility shall have written criteria for admission that shall include:

1. A description of the population to be served;

2. A description of the types of services offered;

3. Intake and admission procedures;

4. Exclusion criteria to define those behaviors or problems that the facility does not have the staff with experience or training to manage; and

5. Description of how educational services will be provided to the population being served.

B. The facility shall accept and serve only those children whose needs are compatible with the services provided through the facility unless a child's admission is ordered by a court of competent jurisdiction.

C. Acceptance of a child as eligible for respite care by a facility approved to provide residential respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

D. Each facility shall provide documentation showing proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's program description as defined by the facility's criteria of admission.

12VAC35-46-650. Least restrictive programming.

Each resident shall be placed in the least restrictive level of programming appropriate to individual functioning and available services.

12VAC35-46-660. Maintenance of residents' records.

A. A separate written or automated case record shall be maintained for each resident. In addition, all correspondence and documents received by the facility relating to the care of that resident shall be maintained as part of the case record. A separate health record may be kept on each resident.

B. Each record shall be kept up to date and in a uniform manner.

C. The provider shall develop and implement written policies and procedures for management of all records, written and automated, that shall describe confidentiality, accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and acquiring of information only to persons legally authorized according to federal and state laws;

2. Facilities using automated records shall address procedures that include:

a. How records are protected from unauthorized access;

b. How records are protected from unauthorized Internet access;

c. How records are protected from loss;

d. How records are protected from unauthorized alteration; and

e. How records are backed up;

3. Security measures to protect records from loss, unauthorized alteration, inadvertent or unauthorized access, and disclosure of information and during transportation of records between service sites;

4. Designation of person responsible for records management; and

5. Disposition of records in the event the facility ceases to operate.

D. The policy shall specify what information is available to the resident.

E. Active and closed records shall be kept in areas that are accessible to authorized staff and protected from unauthorized access, fire, and flood.

1. When not in use written records shall be stored in a metal file cabinet or other metal compartment.

2. Facility staff shall assure the confidentiality of the residents' records by placing them in a locked cabinet or drawer or in a locked room when the staff member is not present.

F. Each resident's written record shall be stored separately subsequent to the resident's discharge according to applicable statutes and regulations.

G. Written and automated records shall be retained in their entirety for a minimum of three years after the date of discharge unless otherwise specified by state or federal requirements.

H. The face sheet shall be retained permanently unless otherwise specified by state or federal requirements.

I. Entries in a resident's record shall be current, dated, and authenticated by the person making the entry. Errors shall be corrected by striking through and initialing. If records are electronic, the provider shall develop and implement a policy and procedure to identify how corrections to the record will be made.

12VAC35-46-670. Record reviews.

Complete written policies and procedures for record reviews shall be developed and implemented that shall evaluate records for completeness, accuracy, and timeliness of documentation. Such policies shall include provisions for ongoing review to determine whether records contain all required service documentation, and release of information documents required by the provider.

12VAC35-46-680. Interstate compact on the placement of children.

A. Documentation of the prior approval of the administrator of the Virginia Interstate Compact on the Placement of Children, Virginia Department of Social Services, shall be retained in the record of each resident admitted from outside Virginia. The requirements of this section shall not apply to a facility providing documentation that the administrator of the Virginia Interstate Compact has determined the facility is statutorily exempt from the compact's provisions.

B. Documentation that the provider has sent copies of all serious incident reports regarding any child placed through the Interstate Compact to the administrator of the Virginia Interstate Compact on the Placement of Children shall be kept in the resident's record.

C. No later than five days after a resident has been transferred to another facility operated by the same sponsor, the resident's record shall contain documentation that the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the resident's transfer.

D. No later than 10 days after discharge, the resident's record shall contain documentation that the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the discharge.

E. The provider shall not discharge or send out-of-state youth in the custody of out-of-state social services agencies and courts to reside with a parent, relative, or other individual who lives in Virginia without the approval of the administrator of the Virginia Interstate Compact on the Placement of Children.

12VAC35-46-690. Participation of residents in human research.

The provider shall:

1. Implement a written policy stating that residents will not be used as subjects of human research; or

2. Document approval, as required by the department for each research project using residents as subjects of human research, unless such research is exempt from review.

12VAC35-46-700. Emergency and self-admissions.

Providers accepting emergency or self-admissions shall:

1. Develop and implement written policies and procedures governing such admissions that shall include procedures to make and document prompt efforts to obtain (i) a written placement agreement signed by the legal guardian or (ii) the order of a court of competent jurisdiction;

2. Place in each resident's record the order of a court of competent jurisdiction, a written request for care, or documentation of an oral request for care; and justification

of why the resident is to be admitted on an emergency basis; and

3. Clearly document in written assessment information gathered for the emergency admission that the individual meets the facility's criteria for admission.

12VAC35-46-710. Application for admission.

A. Admission shall be based on evaluation of an application for admission. The requirements of this section do not apply to court-ordered placements or transfer of a resident between residential facilities located in Virginia and operated by the same sponsor.

B. Providers shall develop, and fully complete prior to acceptance for care, an application for admission that is designed to compile information necessary to determine:

1. The educational needs of the prospective resident;

2. The mental health, emotional, and psychological needs of the prospective resident;

3. The physical health needs, including the immunization needs, of the prospective resident;

4. The protection needs of the prospective resident;

5. The suitability of the prospective resident's admission;

6. The behavior support needs of the prospective resident;

7. Family history and relationships;

8. Social and development history;

9. Current behavioral functioning and social competence;

10. History of previous treatment for mental health, mental retardation, substance abuse, brain injury, and behavior problems; and

11. Medication and drug use profile, which shall include:

a. History of prescription, nonprescription, and illicit drugs that were taken over the six months prior to admission;

b. Drug allergies, unusual and other adverse drug reactions, and ineffective medications; and

c. Information necessary to develop an individualized service plan and a behavior support plan.

C. The resident's record shall contain a completed assessment at the time of a routine admission or within 30 days after an emergency admission.

D. Each facility shall develop and implement written policies and procedures to assess each prospective resident as part of the application process to ensure that:

1. The needs of the prospective resident can be addressed by the facility's services;

2. The facility's staff are trained to meet the prospective resident's needs; and

3. The admission of the prospective resident would not pose any significant risk to (i) the prospective resident or (ii) the facility's residents or staff.

12VAC35-46-720. Written placement agreement.

A. The facility, except a facility that accepts admission only upon receipt of the order of a court of competent jurisdiction, shall develop a written placement agreement that:

1. Authorizes the resident's placement;

2. Addresses acquisition of and consent for any medical treatment needed by the resident;

3. Addresses the rights and responsibilities of each party involved;

4. Addresses financial responsibility for the placement;

5. Addresses visitation with the resident; and

6. Addresses the education plan for the resident and the responsibilities of all parties.

B. Each resident's record shall contain, prior to a routine admission, a completed placement agreement signed by a facility representative and the parent, legal guardian, or placing agency.

C. The record of each person admitted based on a court order shall contain a copy of the court order.

12VAC35-46-730. Face sheet.

A. At the time of admission, each resident's record shall include a completed face sheet that contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number or other unique identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, placing agency, emergency contacts, and parents, if appropriate.

B. Information shall be updated when changes occur.

C. The face sheet for pregnant teens shall also include the expected date of delivery and the name of the hospital to provide delivery services to the resident.

D. The face sheet of residents who are transferred to facilities operated by the same sponsor shall indicate the address and dates of placement and transfer at each location.

E. At the time of discharge the following information shall be added to the face sheet:

1. Date of discharge;

2. Reason for discharge;

3. Names and addresses of persons to whom the resident was discharged; and

4. Forwarding address of the resident, if known.

12VAC35-46-740. Initial objectives and strategies.

Within three days following admission, individualized, measurable objectives and strategies for the first 30 days shall be developed, distributed to affected staff and the resident, and placed in the resident's record. The objectives and strategies shall be based on the reasons for admitting the resident.

12VAC35-46-750. Individualized service plans/quarterly reports.

A. An individualized service plan shall be developed and placed in the resident's record within 30 days following admission and implemented immediately thereafter.

B. Individualized service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;

2. Resident's current level of functioning;

3. Goals, objectives, and strategies established for the resident;

4. Projected family involvement;

5. Projected date for accomplishing each objective; and

6. Status of the projected discharge plan and estimated length of stay, except that this requirement shall not apply to a facility that discharges only upon receipt of the order of a court of competent jurisdiction.

C. The initial individualized service plan shall be reviewed within 60 days of the initial plan and within each 90-day period thereafter and revised as necessary.

D. The provider shall develop and implement written policies and procedures to document progress of the resident towards meeting goals and objectives of the individualized service plan that shall include the:

1. Format;

2. Frequency; and

3. Person responsible.

E. There shall be a documented quarterly review of each resident's progress 60 days following the initial individualized service plan and within each 90-day period thereafter that shall report the:

1. Resident's progress toward meeting the plan's objectives;

2. Family's involvement;

3. Continuing needs of the resident;

4. Resident's progress towards discharge; and

5. Status of discharge planning.

F. Each plan and quarterly progress report shall include the date it was developed and the signature of the person who developed it.

G. Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe the resident's behavior in terms of the objectives in the plan.

H. There shall be documentation showing the involvement of the following parties unless clearly inappropriate, in developing and updating the individualized service plan and in developing the quarterly progress report:

1. The resident;

2. The resident's family, if appropriate, and legal guardian;

3. The placing agency; and

4. Facility staff.

I. The initial individualized service plan, each update, and all quarterly progress reports shall be distributed to the resident; the resident's family, if appropriate, legal guardian, or authorized representative; the placing agency; and appropriate facility staff.

12VAC35-46-760. Resident transfer between residential facilities located in Virginia and operated by the same sponsor.

A. Except when transfer is ordered by a court of competent jurisdiction, the receiving provider shall document at the time of transfer:

1. Preparation through sharing information with the resident, the family, if appropriate, the legal guardian, and the placing agency about the facility, the staff, the population served, activities, and criteria for admission;

2. Notification to the family, if appropriate; the resident, the placement agency, and the legal guardian;

3. Receipt from the sending facility of a written summary of the resident's progress while at the facility, justification for the transfer, and the resident's current strengths and needs; and

4. Receipt of the resident's record.

B. The sending facility shall retain a copy of the face sheet and a written summary of the child's progress while at the facility and shall document the date of transfer and the name of the facility to which the resident has been transferred.

12VAC35-46-765. Discharge.

A. The provider shall have written criteria for discharge that shall include:

1. Criteria for a resident's completing the program that are consistent with the facility's programs and services;

2. Conditions under which a resident may be discharged before completing the program; and

3. Procedures for assisting placing agencies in placing the residents should the facility cease operation.

B. The provider's criteria for discharge shall be accessible to prospective residents, legal guardians, and placing agencies.

C. The record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.

D. Residents shall be discharged only to the legal guardian or legally authorized representative.

E. A facility approved to provide residential respite care shall discharge a resident when the legal guardian no longer intends to use the facility's services.

F. Information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the legal guardian or legally authorized representative, as appropriate.

G. Unless discharge is ordered by a court of competent jurisdiction prior to the planned discharge date, each resident's record shall contain:

1. Documentation that discharge has been planned and discussed with the parent, if appropriate; legal guardian; child-placing agency; and resident; and

2. A written discharge plan.

H. Discharge summaries.

1. No later than 30 days after discharge, a comprehensive discharge summary shall be placed in the resident's record and sent to the persons or agency that made the placement. The discharge summary shall review:

a. Services provided to the resident;

b. The resident's progress toward meeting individualized service plan objectives;

c. The resident's continuing needs and recommendations, if any, for further services and care;

d. Reasons for discharge and names of persons to whom the resident was discharged;

e. Dates of admission and discharge; and

f. Date the discharge summary was prepared and the signature of the person preparing it.

2. In lieu of a comprehensive discharge summary, the record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.

12VAC35-46-770. Placement of residents outside the facility.

A resident shall not be placed outside the facility prior to the facility obtaining a child-placing agency license from the Department of Social Services, except as permitted by statute or by order of a court of competent jurisdiction.

12VAC35-46-780. Case management services.

A. The program of the facility shall be designed to provide case management services. At the time of the admission of any resident, the provider shall identify in writing the staff member responsible for providing case management services. Case management services shall address:

1. Helping the resident and the parents or legal guardian to understand the effects on the resident of separation from the family and the effect of group living;

2. Assisting the resident and the family to maintain their relationships and prepare for the resident's future care;

3. Utilizing appropriate community resources to provide services and maintain contacts with such resources;

4. Helping the resident strengthen his capacity to function productively in interpersonal relationships;

5. Conferring with the child care staff to help them understand the resident's needs in order to promote adjustment to group living; and

6. Working with the resident and with the family or any placing agency that may be involved in planning for the resident's future and in preparing the resident for the return home or to another family for independent living or for other residential care.

B. The provision of case management services shall be documented in each resident's record.

12VAC35-46-790. Therapy.

Therapy shall be provided by an individual (i) appropriately licensed by the Department of Health Professions to provide mental health therapy or counseling; or (ii) who is eligible for licensure and working under the supervision of a licensed therapist unless exempted from these requirements under the Code of Virginia.

12VAC35-46-800. Structured program of care.

A. There shall be evidence of a structured program of care designed to:

1. Meet the residents' physical and emotional needs;

2. Provide protection, guidance, and supervision; and

3. Meet the objectives of any required individualized service plan.

B. There shall be evidence of a structured daily routine designed to ensure the delivery of program services.

C. A daily communication log shall be maintained to inform staff of significant happenings or problems experienced by residents.

D. Health and dental complaints and injuries shall be recorded and shall include the (i) resident's name, complaint, and affected area; and (ii) time of the complaint.

E. The identity of the individual making each entry in the daily communication log shall be recorded.

F. Routines shall be planned to ensure that each resident receives the amount of sleep and rest appropriate for his age and physical condition.

G. Staff shall promote good personal hygiene of residents by monitoring and supervising hygiene practices each day and by providing instruction when needed.

H. The structured daily routine shall comply with any facility and locally imposed curfews.

12VAC35-46-810. Health care procedures.

A. The provider shall have and implement written procedures for promptly:

1. Providing or arranging for the provision of medical and dental services for health problems identified at admission;

2. Providing or arranging for the provision of routine ongoing and follow-up medical and dental services after admission;

3. Providing emergency services for each resident;

4. Providing emergency services for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and

5. Ensuring that the required information in subsection B of this section is accessible and up to date.

B. The following written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician and dentist to be notified;

2. Name, address, and telephone number of a relative or other person to be notified;

3. Medical insurance company name and policy number or Medicaid number;

4. Information concerning:

a. Use of medication;

b. All allergies, including medication allergies;

c. Substance abuse and use; and

d. Significant past and present medical problems; and

5. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent.

C. Facilities approved to provide respite care shall update the information required by subsection B of this section at the time of each stay at the facility.

12VAC35-46-820. Written policies and procedures for a crisis or clinical emergency.

The provider shall develop and implement written policies and procedures for a crisis or clinical emergency that shall include:

1. Procedures for crisis or clinical stabilization, and immediate access to appropriate internal and external resources, including a provision for obtaining physician and mental health clinical services if on-call physician back-up or mental health clinical services are not available; and

2. Employee or contractor responsibilities.

12VAC35-46-830. Documenting crisis intervention and clinical emergency services.

A. The provider shall develop and implement a method for documenting the provision of crisis intervention and clinical emergency services. Documentation shall include the following:

1. Date and time;

2. Nature of crisis or emergency;

3. Name of resident;

4. Precipitating factors;

5. Interventions/treatment provided;

6. Employees or contractors involved;

7. Outcome; and

8. Any required follow-up.

B. If a crisis or clinical emergency involves a resident who receives medical or mental health services, the crisis intervention documentation shall become part of his record.

C. There shall be written policies and procedures for referring to or receiving residents from:

1. Hospitals;

2. Law-enforcement officials;

3. Physicians;

4. Clergy;

5. Schools;

6. Mental health facilities;

7. Court services;

8. Private outpatient providers; and

9. Support groups or others, as applicable.

12VAC35-46-840. Medical examinations and treatment.

A. Each child accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility or no later than seven days following admission, except (i) the report of an examination within the preceding 12 months shall be acceptable if a child transfers from one residential facility licensed or certified by a state agency to another; and (ii) a physical examination shall be conducted within 30 days following an emergency admission if a report of physical examination is not available.

B. Within seven days of placement, each resident shall have had a screening assessment for tuberculosis as evidenced by the completion of a screening form containing, at a minimum, the elements found on the Report of Tuberculosis Screening form published by the Virginia Department of Health. The screening assessment may be no older than 30 days.

C. A screening assessment for tuberculosis shall be completed annually on each resident as evidenced by the completion of a form containing, at a minimum, the elements of the Report of Tuberculosis Screening form published by the Virginia Department of Health.

D. Each resident's health record shall include written documentation of (i) the initial physical examination; (ii) an annual physical examination by or under the direction of a licensed physician, including any recommendation for follow-up care; and (iii) documentation of the provision of follow-up medical care recommended by the physician or as indicated by the needs of the resident.

E. Each physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident, including:

a. Immunizations administered at the time of the exam;

b. Vision exam;

c. Hearing exam;

d. General physical condition, including documentation of apparent freedom from communicable disease, including tuberculosis;

e. Allergies, chronic conditions, and handicaps, if any;

f. Nutritional requirements, including special diets, if any;

g. Restrictions on physical activities, if any; and

h. Recommendations for further treatment, immunizations, and other examinations indicated;

2. Date of the physical examination; and

3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

F. A child with a communicable disease shall not be admitted unless a licensed physician certifies that:

1. The facility is capable of providing care to the child without jeopardizing residents and staff; and

2. The facility is aware of the required treatment for the child and the procedures to protect residents and staff.

G. Each resident's health record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) follow-up dental care recommended by the dentist or as indicated by the needs of the resident. This requirement does not apply to respite care facilities.

H. Each resident's health record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given.

I. Each resident's health record shall include or document the facility's efforts to obtain treatment summaries of ongoing psychiatric or other mental health treatment and reports.

J. The provider shall develop and implement written policies and procedures that include use of standard precautions and address communicable and contagious medical conditions. These policies and procedures shall be approved by a medical professional.

K. A well-stocked first aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

12VAC35-46-850. Medication.

A. The provider shall develop and implement written policies and procedures regarding the delivery and administration of prescription and nonprescription medications used by residents. At a minimum these policies will address:

1. Identification of the staff member responsible for routinely communicating to the prescribing physician:

a. The effectiveness of prescribed medications; and

b. Any adverse reactions, or any suspected side effects.

2. Storage of controlled substances;

3. Documentation of medication errors and drug reactions; and

4. Documentation of any medications prescribed and administered following admission.

B. All medication shall be securely locked and properly labeled.

C. All staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications before they can administer medication.

D. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the side effects.

E. A program of medication, including over-the-counter medication, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

F. Medication prescribed by a person authorized by law shall be administered as prescribed.

G. A medication administration record shall be maintained of all medicines received by each resident and shall include:

1. Date the medication was prescribed;

2. Drug name;

3. Schedule for administration;

4. Strength;

5. Route;

6. Identity of the individual who administered the medication; and

7. Dates the medication was discontinued or changed.

H. In the event of a medication error or an adverse drug reaction, first aid shall be administered if indicated. Staff shall promptly contact a poison control center, pharmacist, nurse, or physician and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented.

I. Medication refusals shall be documented including action taken by staff.

J. The provider shall develop and implement written policies and procedures for documenting medication errors, reviewing medication errors and reactions and making any necessary improvements, the disposal of medication, the storage of controlled substances, and the distribution of medication off campus. The policy and procedures must be approved by a health care professional. The provider shall keep documentation of this approval.

K. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which children sleep or participate in programs.

L. Syringes and other medical implements used for injecting or cutting skin shall be locked.

12VAC35-46-860. Nutrition.

A. Each resident shall be provided a daily diet that (i) consists of at least three nutritionally balanced meals and an evening snack; (ii) includes an adequate variety and quantity of food for the age of the resident; and (iii) meets minimum nutritional requirements and the U.S. Department of Health and Human Services and U.S. Department of Agriculture Dietary Guidelines for Americans, 2005, 6th Edition.

B. Menus of actual meals served shall be kept on file for at least six months.

C. Special diets shall be provided when prescribed by a physician and the established religious dietary practices of the resident shall be observed.

D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a special diet has been prescribed by a physician for the staff or residents or the staff or residents are observing established religious dietary practices.

E. There shall not be more than 15 hours between the evening meal and breakfast the following day.

F. Providers shall assure that food is available to residents who need to eat breakfast before the 15 hours have expired.

G. Providers shall receive approval from the department if they wish to extend the time between meals on weekends and holidays. There shall never be more than 17 hours between the evening meal and breakfast the following day on weekends and holidays.

12VAC35-46-870. Staff supervision of residents.

A. No member of the child care staff shall be on duty more than six consecutive days without a rest day, except in an emergency or as approved by the department for live-in staff.

B. Child care staff shall have an average of at least two rest days per week in any four-week period. Rest days shall be in addition to vacation time and holidays.

C. Child care staff other than live-in staff shall not be on duty more than 16 consecutive hours, except in an emergency.

D. There shall be at least one trained child care worker on duty and actively supervising residents at all times that one or more residents are present.

E. Whenever children are being supervised by staff there shall be at least one staff person present with a current basic certificate in standard first aid and a current certificate in

cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority.

F. Supervision policies.

1. The provider shall develop and implement written policies and procedures that address staff supervision of children including contingency plans for resident illnesses, emergencies, off-campus activities, and resident preferences. These policies and procedures shall be based on the:

a. Needs of the population served;

b. Types of services offered;

c. Qualifications of staff on duty; and

d. Number of residents served.

2. At all times the ratio of staff to residents shall be at least one staff to eight residents for facilities during the hours residents are awake, except when the department has approved or required a supervision plan with a different ratio based on the needs of the population served.

3. Providers requesting a ratio that allows a higher number of residents to be supervised by one staff person than was approved or required shall submit a justification to the department that shall include:

a. Why resident care will not be adversely affected; and

b. How residents' needs will be met on an individual as well as group basis.

4. Written policies and procedures governing supervision of residents and any justifications for a ratio deviation that allows a higher number of residents to be supervised by one staff than was approved or required shall be reviewed and approved by the department prior to implementation.

5. The supervision policies or a summary of the policies shall be provided, upon request, to the placing agency or legal guardian prior to placement.

12VAC35-46-880. Emergency telephone numbers.

A. There shall be an emergency telephone number where a staff person may be immediately contacted 24 hours a day.

B. Residents who are away from the facility and the adults responsible for their care during the absence shall be furnished with the emergency phone number.

12VAC35-46-890. Searches.

A. Strip searches and body cavity searches are prohibited except:

1. As permitted by other applicable state regulations; or

2. As ordered by a court of competent jurisdiction.

B. A provider that does not conduct pat downs shall have a written policy prohibiting them.

C. A provider that conducts pat downs shall develop and implement written policies and procedures governing them that shall provide that:

1. Pat downs shall be limited to instances where they are necessary to prohibit contraband;

2. Pat downs shall be conducted by personnel of the same gender as the resident being searched;

3. Pat downs shall be conducted only by personnel who are specifically authorized to conduct searches by the written policies and procedures; and

4. Pat downs shall be conducted in such a way as to protect the resident's dignity and in the presence of one or more witnesses.

12VAC35-46-900. Behavior support.

A. Within 30 days of admission, the provider shall develop and implement a written behavior support plan that allows the resident to self-manage his own behaviors. Each individualized behavior support plan shall include:

1. Identification of positive and problem behavior;

2. Identification of triggers for behaviors;

3. Identification of successful intervention strategies for problem behavior;

4. Techniques for managing anger and anxiety; and

5. Identification of interventions that may escalate inappropriate behaviors.

B. Individualized behavior support plans shall be developed in consultation with the:

1. Resident;

2. Legal guardian;

3. Resident's parents, if appropriate;

4. Program director;

5. Placing agency staff; and

6. Other appropriate individuals.

C. Prior to working alone with an assigned resident each staff member shall demonstrate knowledge and understanding of that resident's behavior support plan.

D. Each provider shall develop and implement written policies and procedures concerning behavior support plans and other behavioral interventions that are directed toward maximizing the growth and development of the resident. In addition to addressing the previous requirements of this regulation, these policies and procedures shall:

1. Define and list techniques that are used and are available for use in the order of their relative degree of intrusiveness or restrictiveness;

2. Specify the staff members who may authorize the use of each technique;

3. Specify the processes for implementing such policies and procedures;

4. Specify the mechanism for monitoring the use of behavior support techniques; and

5. Specify the methods for documenting the use of behavior support techniques.

12VAC35-46-910. Timeout.

A. The provider shall develop and implement written policies and procedures governing the conditions under which a resident may be placed in timeout and the maximum period of timeout. The conditions and maximum period of timeout shall be based on the resident's chronological and developmental level.

B. The area in which a resident is placed shall not be locked nor the door secured in a manner that prevents the resident from opening it.

C. A resident in timeout shall be able to communicate with staff.

D. Staff shall check on the resident in the timeout area at least every 15 minutes and more often depending on the nature of the resident's disability, condition, and behavior.

E. Use of timeout and staff checks on the residents shall be documented.

12VAC35-46-920. Prohibitions.

The following actions are prohibited:

1. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

2. Limitation on contacts and visits with the resident's attorney, a probation officer, regulators, or placing agency representative;

3. Bans on contacts and visits with family or legal guardians, except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;

4. Delay or withholding of incoming or outgoing mail, except as permitted by other applicable state and federal regulations or by order of a court of competent jurisdiction;

5. Any action that is humiliating, degrading, or abusive;

6. Corporal punishment;

7. Subjection to unsanitary living conditions;

8. Deprivation of opportunities for bathing or access to toilet facilities, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

9. Deprivation of health care;

10. Deprivation of appropriate services and treatment;

11. Application of aversive stimuli, except as permitted pursuant to other applicable state regulations;

12. Administration of laxatives, enemas, or emetics, except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record;

13. Deprivation of opportunities for sleep or rest, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record; and

14. Limitation on contacts and visits with advocates employed by the department or the Virginia Office for Protection and Advocacy.

12VAC35-46-930. Pharmacological or mechanical restraints.

A. Use of mechanical restraints is prohibited except as permitted by other applicable state regulations or as ordered by a court of competent jurisdiction.

B. Use of pharmacological restraints is prohibited.

12VAC35-46-940. Behavior interventions.

A. The provider shall develop and implement written policies and procedures for behavioral interventions and for documenting and monitoring the management of resident behavior. Rules of conduct shall be included in the written policies and procedures. These policies and procedures shall:

1. Define and list techniques that are used and available for use in the order of their relative degree of restrictiveness;

2. Specify the staff members who may authorize the use of each technique; and

3. Specify the processes for implementing such policies and procedures.

B. Written information concerning the policies and procedures of the provider's behavioral support and intervention programs shall be provided prior to admission to prospective residents, legal guardians, and placing agencies. For court-ordered and emergency admissions, this information shall be provided to:

1. Residents within 12 hours following admission;

2. Placing agencies within 72 hours following the resident's admission; and

3. Legal guardians within 72 hours following the resident's admission. This requirement does not apply when a state psychiatric hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

C. When substantive revisions are made to policies and procedures governing management of resident behavior, written information concerning the revisions shall be provided to:

1. Residents prior to implementation; and

2. Legal guardians and placing agencies prior to implementation except when a state psychiatric hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

D. The provider shall develop and implement written policies and procedures governing use of physical restraint that shall include:

1. The staff position who will write the report and timeframe;

2. The staff position who will review the report and timeframe; and

3. Methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior.

E. All physical restraints shall be reviewed and evaluated to plan for continued staff development for performance improvement.

F. Use of physical restraint shall be limited to that which is minimally necessary to protect the resident or others.

G. Trained staff members may physically restrain a resident only after less restrictive interventions.

H. Only trained staff members may manage resident behavior.

I. Each application of physical restraint shall be fully documented in the resident's record including:

1. Date;

2. Time;

3. Staff involved;

4. Justification for the restraint;

5. Less restrictive interventions that were unsuccessfully attempted prior to using physical restraint;

6. Duration;

7. Description of method or methods of physical restraint techniques used;

8. Signature of the person completing the report and date; and

9. Reviewer's signature and date.

J. Providers shall ensure that restraint may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of restraint, including hands-on techniques.

K. The provider shall review the facility's behavior intervention techniques and policies and procedures at least annually to determine appropriateness for the population served.

L. Any time children are present staff shall be present who have completed all trainings in behavior intervention.

12VAC35-46-950. Seclusion.

Seclusion is allowed only as permitted by other applicable state regulations.

12VAC35-46-960. Seclusion room requirements.

A. The room used for seclusion shall meet the design requirements for buildings used for detention or seclusion of persons.

B. The seclusion room shall be at least six feet wide and six feet long with a minimum ceiling height of eight feet.

C. The seclusion room shall be free of all protrusions, sharp corners, hardware, fixtures, or other devices, that may cause injury to the occupant.

D. Windows in the seclusion room shall be constructed to minimize breakage and otherwise prevent the occupant from harming himself.

E. Light fixtures and other electrical receptacles in the seclusion room shall be recessed or so constructed as to prevent the occupant from harming himself. Light controls shall be located outside the seclusion room.

F. Doors to the seclusion room shall be at least 32 inches wide, shall open outward and shall contain observation view panels of transparent wire glass or its approved equivalent, not exceeding 120 square inches but of sufficient size for someone outside the door to see into all corners of the room.

G. The seclusion room shall contain only a mattress with a washable mattress covering designed to avoid damage by tearing.

H. The seclusion room shall maintain temperatures appropriate for the season.

I. All space in the seclusion room shall be visible through the locked door, either directly or by mirrors.

12VAC35-46-970. Education.

A. Each resident of compulsory school attendance age shall be enrolled, as provided in the Code of Virginia, in an appropriate educational program within five school business days. Documentation of the enrollment shall be kept in the resident's record.

B. The provider shall ensure that educational guidance and counseling in selecting courses is provided for each resident and shall ensure that education is an integral part of the resident's total program.

C. Providers operating educational programs for children with disabilities shall operate those programs in compliance with applicable state and federal statutes and regulations.

D. When a child with a disability has been placed in a residential facility, the facility shall contact the division superintendent of the resident's home locality. Documentation of the contact with the resident's home school shall be kept in the resident's record.

E. A provider that has an academic or vocational program that is not certified or approved by the Department of Education shall document that teachers meet the qualifications to teach the same subjects in the public schools.

F. Each provider shall develop and implement written policies and procedures to ensure that each resident has adequate study time.

12VAC35-46-980. Religion.

A. The provider shall have and implement written policies regarding opportunities for residents to participate in religious activities.

B. The provider's policies on religious participation shall be available to residents and any individual or agency considering placement of a child in the facility.

C. Residents shall not be coerced to participate in religious activities.

12VAC35-46-990. Recreation.

A. The provider shall have a written description of its recreation program that describes activities that are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the residents that includes:

1. Opportunities for individual and group activities;

2. Free time for residents to pursue personal interests that shall be in addition to a formal recreation program, except this subdivision does not apply to secure custody facilities;

3. Use of available community recreational resources and facilities, except this subdivision does not apply to secure custody facilities;

4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs, or other regular events; and

5. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and attitudes.

B. The provider shall develop and implement written policies and procedures to ensure the safety of residents participating in recreational activities that include:

1. How activities will be directed and supervised by individuals knowledgeable in the safeguards required for the activities;

2. How residents are assessed for suitability for an activity and the supervision provided; and

3. How safeguards for water-related activities will be provided, including ensuring that a certified lifeguard supervises all swimming activities.

C. For all overnight recreational trips away from the facility the provider shall document trip planning to include:

1. A supervision plan for the entire duration of the activity including awake and sleeping hours;

2. A plan for safekeeping and distribution of medication;

3. An overall emergency, safety, and communication plan for the activity including emergency numbers of facility administration;

4. Staff training and experience requirements for each activity;

5. Resident preparation for each activity;

6. A plan to ensure that all necessary equipment for the activity is in good repair and appropriate for the activity;

7. A trip schedule giving addresses and phone numbers of locations to be visited and how the location was chosen/evaluated;

8. A plan to evaluate residents' physical health throughout the activity and to ensure that the activity is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination;

9. A plan to ensure that a certified life guard supervises all swimming activities in which residents participate; and

10. Documentation of any variations from trip plans and reason for the variation.

D. All overnight out-of-state or out-of-country recreational trips require written permission from each resident's legal guardian. Documentation of the written permission shall be kept in the resident's record.

12VAC35-46-1000. Community relationships.

A. Opportunities shall be provided for the residents to participate in activities and to utilize resources in the community.

B. The provider shall develop and implement written policies and procedures for evaluating persons or organizations in the community who wish to associate with residents on the premises or take residents off the premises. The procedures shall cover how the facility will determine if participation in such community activities or programs would be in the residents' best interest.

C. Each facility shall have a staff community liaison who shall be responsible for facilitating cooperative relationships with neighbors, the school system, local law enforcement, local government officials, and the community at large.

D. Each provider shall develop and implement written policies and procedures for promoting positive relationships with the neighbors that shall be approved by the department.

12VAC35-46-1010. Clothing.

A. Provision shall be made for each resident to have an adequate supply of clean, comfortable, and well-fitting clothes and shoes for indoor and outdoor wear.

B. Clothes and shoes shall be similar in style to those generally worn by children of the same age in the community who are engaged in similar activities, except this requirement does not apply to secure custody facilities.

C. Residents shall have the opportunity to participate in the selection of their clothing, except this requirement does not apply to secure custody facilities.

D. Residents shall be allowed to take personal clothing when leaving the facility.

12VAC35-46-1020. Allowances and spending money.

A. The provider shall provide opportunities appropriate to the ages and developmental levels of the residents for learning the value and use of money.

B. There shall be a written policy regarding allowances that shall be made available to legal guardians at the time of admission.

C. The provider shall develop and implement written policies for safekeeping and for recordkeeping of any money that belongs to residents.

D. A resident's funds, including any allowance or earnings, shall be used for the resident's benefit.

12VAC35-46-1030. Work and employment.

A. Assignment of chores, that are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the resident.

B. Chores shall not interfere with school programs, study periods, meals, or sleep.

C. Work assignments or employment outside the facility, including reasonable rates of pay, shall be approved by the program director with the knowledge and consent of the legal guardian.

D. In both work assignments and employment, the program director shall evaluate the appropriateness of the work and the fairness of the pay.

12VAC35-46-1040. Visitation at the facility and to the resident's home.

A. The provider shall have and implement written visitation policies and procedures that allow reasonable visiting privileges and flexible visiting hours, except as permitted by other applicable state regulations.

B. Copies of the written visitation policies and procedures shall be made available to the parents, when appropriate, legal guardians, the resident, and other interested persons important to the resident no later than the time of admission, except that when parents or legal guardians do not participate in the admission process, visitation policies and procedures shall be mailed to them within 24 hours after admission.

12VAC35-46-1050. Resident visitation at the homes of staff.

If a provider permits staff to take residents to the staff's home, the facility must receive written permission of the resident's legal guardian or placing agency before the visit occurs. The written permission shall be kept in the resident's record.

12VAC35-46-1060. Vehicles and power equipment.

A. Transportation provided for or used by children shall comply with local, state, and federal laws relating to:

1. Vehicle safety and maintenance;

2. Licensure of vehicles;

3. Licensure of drivers; and

4. Child passenger safety, including requiring children to wear appropriate seat belts or restraints for the vehicle in which they are being transported.

B. There shall be written safety rules for transportation of residents appropriate to the population served that shall include taking head counts at each stop.

C. The provider shall develop and implement written safety rules for use and maintenance of vehicles and power equipment.

12VAC35-46-1070. Serious incident reports.

A. Any serious incident, accident, or injury to the resident; any overnight absence from the facility without permission;

any runaway; and any other unexplained absence shall be reported within 24 hours (i) to the placing agency; (ii) to either the parent or legal guardian, or both as appropriate; and (iii) noted in the resident's record.

B. The provider shall document the following:

1. The date and time the incident occurred;

2. A brief description of the incident;

3. The action taken as a result of the incident;

4. The name of the person who completed the report;

5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and

6. The name of the person to whom the report was made.

C. The provider shall notify the department within 24 hours of any serious illness or injury, any death of a resident, and all other situations as required by the department. Such reports shall include:

1. The date and time the incident occurred;

2. A brief description of the incident;

3. The action taken as a result of the incident;

4. The name of the person who completed the report;

5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and

6. The name of the person to whom the report was made.

D. In the case of a serious injury or death, the report shall be made on forms approved by the department.

12VAC35-46-1080. Suspected child abuse or neglect.

A. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include procedures for:

1. Handling accusations against staff; and

2. Promptly referring, consistent with requirements of the Code of Virginia, suspected cases of child abuse and neglect to the local child protective services unit and for cooperating with the unit during any investigation.

B. Any case of suspected child abuse or neglect shall be reported to the local child protective services unit as required by the Code of Virginia.

C. Any case of suspected child abuse or neglect occurring at the facility, on a facility-sponsored event or excursion, or involving facility staff shall be reported immediately to (i) the Office of Human Rights and placing agency; and (ii) either the resident's parent or legal guardian, or both, as appropriate.

D. When a case of suspected child abuse or neglect is reported to child protective services, the resident's record shall include:

1. The date and time the suspected abuse or neglect occurred;

2. A description of the suspected abuse or neglect;

3. Action taken as a result of the suspected abuse or neglect; and

4. The name of the person to whom the report was made at the local child protective services unit.

12VAC35-46-1090. Grievance procedures.

A. The provider shall develop and implement written policies and procedures governing the handling of grievances by residents. If not addressed by other applicable regulations, the policies and procedures shall:

1. Be written in clear and simple language;

2. Be communicated to the residents in an age or developmentally appropriate manner;

3. Be posted in an area easily accessible to residents and their parents and legal guardians;

4. Ensure that any grievance shall be investigated by an objective employee who is not the subject of the grievance; and

5. Require continuous monitoring by the provider of any grievance to assure there is no retaliation or threat of retaliation against the child.

B. All documentation regarding grievances shall be kept on file at the facility for three years unless other regulations require a longer retention period.

Part V
Disaster or Emergency Planning

12VAC35-46-1100. Disaster or emergency planning.

The facility is required to have written procedures to follow in emergencies. It is also required that these plans be known by staff and, as appropriate, residents. It is advisable that the facility develop its emergency plans with the assistance of state or local public safety authorities.

12VAC35-46-1110. Emergency and evacuation procedures.

A. The provider shall develop a written emergency preparedness and response plan for all locations. The plan 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 provider's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, work place violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery;

3. Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities, coordination of logistics during the emergency, communications, life safety of employees, contractors, students/intern, volunteers, visitors and residents, property protection, community outreach, and recovery and restoration;

4. Written emergency response procedures for assessing the situation; protecting residents, employees, contractors, students/interns, volunteers, visitors, equipment, and vital records; and restoring services. Emergency response procedures shall address:

a. Communicating with employees, contractors, and community responders;

b. Warning and notification of residents;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;

e. Relocating residents, if necessary;

f. Notifying family members, if appropriate, and legal guardians;

g. Alerting emergency personnel and sounding alarms; and

h. Locating and shutting off utilities when necessary;

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters; and

6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. The provider shall develop emergency preparedness and response training for all employees, contractors, students/interns, and volunteers that shall include responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency information for residents including medical information; and

5. Utilizing community support services.

C. The provider shall document the review of the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, students, and volunteers and incorporated into training for employees, contractors, students/interns, and volunteers and orientation of residents to services.

D. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the provider shall take appropriate action to protect the health, safety, and welfare of the residents and take appropriate action to remedy the conditions as soon as possible.

E. Employees, contractors, students/interns, and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the provider should first respond and stabilize the disaster/emergency. After the disaster/emergency is stabilized, the provider shall report the disaster/emergency and the conditions at the facility to the legal guardian and the placing agency as soon as possible of the conditions at the facility and report the disaster/emergency to the department as soon as possible, but no later than 72 hours after the incident occurs.

G. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations where they can easily be seen by staff and residents.

H. The procedures and responsibilities reflected in the emergency procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures.

I. At least one evacuation drill (the simulation of the facility's emergency procedures) shall be conducted each month in each building occupied by residents.

J. Evacuation drills shall include, at a minimum:

1. Sounding of emergency alarms;

2. Practice in evacuating buildings;

3. Practice in alerting emergency authorities;

4. Simulated use of emergency equipment; and

5. Practice in securing resident emergency information.

K. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

L. A record shall be maintained for each evacuation drill and shall include the following:

1. Buildings in which the drill was conducted;

2. Date and time of drill;

3. Amount of time to evacuate the buildings;

4. Specific problems encountered;

5. Staff tasks completed including:

a. Head count, and

b. Practice in notifying emergency authorities.

6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

M. The record for each evacuation drill shall be retained for three years after the drill, unless a longer retention period is required by applicable law or regulation.

N. The facility shall assign one staff member who shall ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

Part VI
Special Programs

12VAC35-46-1120. Independent living programs.

A. Each independent living program must demonstrate that a structured program using materials and curriculum, approved by the department, is being used to teach independent living skills. The curriculum must include information regarding each of the following areas:

1. Money management and consumer awareness;

2. Food management;

3. Personal appearance;

4. Social skills;

5. Health/sexuality;

6. Housekeeping;

7. Transportation;

8. Educational planning/career planning;

9. Job-seeking skills;

10. Job maintenance skills;

11. Emergency and safety skills;

12. Knowledge of community resources;

13. Interpersonal skills/social relationships;

14. Legal skills;

15. Leisure activities; and

16. Housing.

B. Within 14 days of placement the provider must complete an assessment, including strengths and needs, of the resident's life skills using an independent living assessment tool approved by the department. The assessment must cover the following areas:

1. Money management and consumer awareness;

2. Food management;

3. Personal appearance;

4. Social skills;

5. Health/sexuality;

6. Housekeeping;

7. Transportation;

8. Educational planning/career planning;

9. Job-seeking skills;

10. Job maintenance skills;

11. Emergency and safety skills;

12. Knowledge of community resources;

13. Interpersonal skills/social relationships;

14. Legal skills;

15. Leisure activities; and

16. Housing.

C. The resident's individualized service plan shall, in addition to the requirements found in 12VAC35-105-750, address each of the following areas, as applicable:

1. Money management and consumer awareness;

2. Food management;

3. Personal appearance;

4. Social skills;

5. Health/sexuality;

6. Housekeeping;

7. Transportation;

8. Educational planning/career planning;

9. Job-seeking skills;

10. Job maintenance skills;

11. Emergency and safety skills;

12. Knowledge of community resources;

13. Interpersonal skills/social relationships;

14. Legal skills;

15. Leisure activities; and

16. Housing.

D. Each independent living program shall develop and implement policies and procedures to train all direct care staff within 14 days of employment on the content of the independent living curriculum, the use of the independent living materials, the application of the assessment tool, and the documentation methods used. Documentation of the orientation shall be kept in the employee's staff record.

E. If residents age 18 years or older are to share in the responsibility for their own medication with the provider, the independent living program shall develop and implement written policies and procedures that include:

1. Training for the resident in self administration of medication and recognition of side effects;

2. Method for storage and safekeeping of medication;

3. Method for obtaining approval for the resident to self administer medication from a person authorized by law to prescribe medication; and

4. Method for documenting the administration of medication.

F. Each independent living program shall develop and implement written policies and procedures that ensure that each resident is receiving adequate nutrition as required in 12VAC35-46-860.

12VAC35-46-1130. Mother/baby programs.

A. Each provider shall develop and implement written policies and procedures to orient direct care staff within 14 days of hire regarding the following:

1. Responsibilities of mothers regarding the child;

2. Child development including age-appropriate behavior for each stage of development;

3. Appropriate behavioral interventions for infants and toddlers;

4. Basic infant and toddler care including but not limited to nutritional needs, feeding procedures, bathing techniques; and

5. Safety issues for infants and toddlers.

B. Each direct care worker shall have certification in infant CPR and first aid prior to working alone with infants or toddlers.

C. A placement agreement shall be signed by the legal guardian for each adolescent mother and a separate placement agreement shall be signed for each child at the time of admission.

D. In addition to the requirements of 12VAC35-46-710 the application for admission for the adolescent's child must include:

1. The placement history of the child;

2. The developmental milestones of the child; and

3. The nutritional needs of the child.

E. In addition to the requirements of 12VAC35-46-660, the face sheet for adolescent's child shall also include:

1. Type of delivery;

2. Weight and length at birth;

3. Any medications or allergies; and

4. Name and address, if known, of the biological father.

F. A combined service plan following the requirements of 12VAC35-46-750 must be written for the adolescent mother and her child within 30 days of the admission of the adolescent's child.

G. There shall be a combined documented review of the adolescent mother's and her child's progress following the requirements of the quarterly report 60 days following the first combined service plan and within each 90-day period thereafter.

H. The developmental milestones of the adolescent's child must be documented in each quarterly progress report.

I. The record of each child 18 months or younger shall include the child's feeding schedule and directions for feeding. This information shall be posted in the kitchen.

J. The provider shall develop and implement written policies and procedures for tracking:

1. What a child 18 months or younger is eating;

2. How much a child 18 months or younger is eating; and

3. The response to newly introduced foods of the child 18 months or younger.

K. The provider shall develop and implement written policies and procedures to record all diaper changes.

L. The provider shall monitor that all infants are held and spoken to and placed in a position to observe activities when they are awake.

M. Bottle-fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped.

N. The provider shall monitor that all children of adolescent mothers have access to age-appropriate toys and are provided opportunity for visual and sound stimulation.

O. The provider shall ensure that when an adolescent mother is in school or is working, her child is appropriately cared for, either in a licensed child day program or at the facility.

P. A daily activity log must be kept for each child of the adolescent mother showing what activities the child actually participated in during the day. The daily log must show that children have the opportunity to participate in sensory, language, manipulative, building, large muscle, and learning activities.

Q. The provider shall develop and implement written policies and procedures regarding health care of the adolescent's child including:

1. Obtaining health care;

2. Ensuring follow-up care is provided;

3. Ensuring adolescent mothers administer to their children only prescription and nonprescription medication authorized by a health care professional licensed to prescribe medication; and

4. Medication administration.

R. The provider shall develop and implement written policies and procedures to ensure that all toys and equipment to be used by children are sturdy, are of safe construction, are nontoxic and free of hazards, and meet industry safety standards.

S. The facility shall develop and implement written policies and procedures for inspecting toys and equipment on a regular basis for cleanliness and safety.

T. Cribs shall be placed where objects outside the crib such as cords from the blinds or curtains are not within reach of infants or toddlers.

U. Pillows and filled comforters shall not be used by children under two years of age.

V. Infant walkers shall not be used.

W. Adolescent mothers and their babies may share a bedroom as allowed by 12VAC35-46-480, but shall not share a room with other adolescents or their children.

X. Pregnant adolescents may share a room as allowed by 12VAC35-46-480.

Y. Providers shall develop and implement written policies and procedures to protect infants, toddlers, and young children from dangers in their environment. The policies and procedures must include but not be limited to protection from:

1. Electrocution;

2. Falling down steps or ramps or gaining access to balconies, porches, or elevated areas; and

3. Poisons, including poisonous plants.

12VAC35-46-1140. Campsite programs or adventure activities.

A. All wilderness campsite programs and providers that take residents on wilderness/adventure activities shall develop and implement policies and procedures that include:

1. Staff training and experience requirements for each activity;

2. Resident training and experience requirements for each activity;

3. Specific staff-to-resident ratio and supervision plan appropriate for each activity; including sleeping arrangements and supervision during night time hours;

4. Plans to evaluate and document each participant's physical health throughout the activity;

5. Preparation and planning needed for each activity and time frames;

6. Arrangement, maintenance, and inspection of activity areas;

7. A plan to ensure that any equipment and gear that is to be used in connection with a specified wilderness/adventure activity is appropriate to the activity, certified if required, in good repair, in operable condition, and age and body size appropriate;

8. Plans to ensure that all ropes and paraphernalia used in connection with rope rock climbing, rappelling, high and low ropes courses, or other adventure activities in which ropes are used are approved annually by an appropriate certifying organization, and have been inspected by staff responsible for supervising the adventure activity before engaging residents in the activity;

9. Plans to ensure that all participants are appropriately equipped, clothed, and wearing safety gear, such as a helmet, goggles, safety belt, life jacket, or a flotation device, that is appropriate to the adventure activity in which the resident is engaged;

10. Plans for food and water supplies and management of these resources;

11. Plans for the safekeeping and distribution of medication;

12. Guidelines to ensure that participation is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination;

13. Overall emergency, safety, and communication plans for each activity including rescue procedures, frequency of

drills, resident accountability, prompt evacuation, and notification of outside emergency services; and

14. Review of trip plans by the trip coordinator.

B. All wilderness campsite programs and providers that take residents on wilderness/adventure activities must designate one staff person to be the trip coordinator who will be responsible for all facility wilderness or adventure trips.

1. This person shall have experience in and knowledge regarding wilderness activities and be trained in wilderness first aid. The individual shall also have at least one year experience at the facility and be familiar with the facility procedures, staff, and residents.

2. Documentation regarding this knowledge and experience shall be found in the individual's staff record.

3. The trip coordinator shall review all trip plans and procedures and shall ensure that staff and residents meet the requirements as outlined in the facility's policy regarding each wilderness/adventure activity to take place during the trip.

C. The trip coordinator shall conduct a posttrip debriefing within 72 hours of the group's return to base to evaluate individual and group goals as well as the trip as a whole.

D. The trip coordinator shall be responsible for writing a summary of the debriefing session and shall be responsible for ensuring that procedures and policies are updated to reflect improvements needed.

E. A trip folder shall be developed for each wilderness/adventure activity conducted away from the facility and shall include:

1. Medical release forms including pertinent medical information on the trip participants;

2. Phone numbers for administrative staff and emergency personnel;

3. Daily trip logs;

4. Incident reports;

5. Swimming proficiency list if trip is near water;

6. Daily logs;

7. Maps of area covered by the trip; and

8. Daily plans.

F. Initial physical forms used by wilderness campsite programs and providers that take residents on wilderness or adventure activities shall include:

1. A statement notifying the doctor of the types of activities the resident will be participating in; and

2. A statement signed by the doctor stating the individual's health does not prevent him from participating in the described activities.

G. First aid kits used by wilderness campsite programs and providers that take residents on adventure activities shall be activity appropriate and shall be accessible at all times.

H. Direct care workers hired by wilderness campsite programs and providers that take residents on wilderness/adventure activities shall be trained in a wilderness first aid course.

I. The provider shall ensure that before engaging in any aquatic activity, each resident shall be classified by the trip coordinator or designee according to swimming ability in one of two classifications: swimmer and nonswimmer. This shall be documented in the resident's record and in the trip folder.

J. The provider shall ensure that lifesaving equipment is provided for all aquatic activities and is placed so that it is immediately available in case of an emergency. At a minimum, the equipment shall include:

1. A whistle or other audible signal device; and

2. A lifesaving throwing device.

K. A separate bed, bunk, or cot shall be made available for each person.

L. A mattress cover shall be provided for each mattress.

M. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitoes.

N. Bedding shall be clean, dry, sanitary, and in good repair.

O. Bedding shall be adequate to ensure protection and comfort in cold weather.

P. Sleeping bags, if used, shall be fiberfill and rated for 0°F.

Q. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

R. Each resident shall be provided with an adequate supply of clean clothing that is suitable for outdoor living and is appropriate to the geographic location and season.

S. Sturdy, water-resistant, outdoor footwear shall be provided for each resident.

T. Each resident shall have adequate personal storage area.

U. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other source of combustion.

V. Artificial lighting shall be provided in a safe manner.

W. All areas of the campsite shall be lighted for safety when occupied by residents.

X. Staff of the same sex may share a sleeping area with the residents.

Y. A telephone or other means of communication is required at each area where residents sleep or participate in programs.

DOCUMENTS INCORPORATED BY REFERENCE (22VAC40-675)

Report of Tuberculosis Screening, Virginia Department of Health, http://www.vdh.virginia.gov/epidemiology/DiseasePrevention/Programs/Tuberculosis/Forms/documents/Form2.pdf, Virginia Department of Health.

U.S. Department of Health and Human Services and U.S. Department of Agriculture Dietary Guidelines for Americans, 6th Edition, January 2005, U.S. Government Printing Office, Washington, D.C.

VA.R. Doc. No. R09-1612; Filed May 22, 2009, 1:15 p.m.

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Final Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4; however, under the provisions of § 2.2-4031, it is required to publish all proposed and final regulations.

Title of Regulation: **13VAC10-40. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income (amending 13VAC10-40-20, 13VAC10-40-40, 13VAC10-40-50, 13VAC10-40-120, 13VAC10-40-130, 13VAC10-40-140, 13VAC10-40-160, 13VAC10-40-170, 13VAC10-40-220).**

Statutory Authority: § 36-55.30.3 of the Code of Virginia.

Effective Date: June 5, 2009.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540 or email judson.mckellar@vhda.com.

Summary:

To address potential sale of single family mortgage loans to investors, the amended regulations provide that:

1. The authority may apply the tax-exempt financing requirements and restrictions (e.g., first-time homebuyer restrictions, maximum incomes and maximum sales price) to mortgage loans that are not financed with tax-exempt bonds;

2. Investor underwriting guidelines that are more stringent than authority guidelines will apply to loans investors will purchase; and

3. The reservation period (currently 60 days) may be shortened to meet investor loan delivery deadlines.

The following amendments are made to the FHA Plus program:

1. The authority's FHA Plus second loan may be combined with an FHA first mortgage loan financed by a lender other than VHDA;

2. Flexibility is provided to lower the maximum amount of the FHA Plus second loan below the standard 5.0% of the lesser of appraised value or sales price;

3. If the authority is not making the FHA first mortgage loan, the authority may require that the FHA Plus first loan meet the authority's underwriting guidelines;

4. Flexibility is provided to impose more stringent underwriting criteria on the FHA Plus second loan than are applicable to the FHA Plus first loan;

5. The authority may charge an origination fee and/or a discount point on the FHA plus loan in an amount determined by the executive director to be necessary to compensate the authority for originating, processing, and closing the FHA plus loan, if the first deed of trust is to be financed by another lender;

6. The sum of all liens may not exceed 100% of the cost to acquire the property (the cost to acquire the property is the sales price plus allowable borrower paid closing costs, discount points, and prepaid expenses); and

7. The FHA insured first mortgage when combined with the FHA plus second mortgage and any other liens may not result in cash back to the borrower.

In underwriting FHA, VA, and RD loans, the authority may impose its more stringent borrower's employment, income, and credit requirement on loans that otherwise would be subject only to the applicable insurer or guarantor's requirements.

In order to address investor requirements, the regulations are amended to provide that the authority's single family mortgage loans are assumable only if permitted by the authority. For example, Fannie Mae guidelines do not permit loans to be assumed. An exception is provided for loans (such as FHA loans) that are assumable in accordance with insurer or guarantor guidelines or applicable law.

The authority may require that the company issuing private mortgage insurance insuring an authority mortgage loan have a Moody's Investors Service Insurance Financial Strength rating not lower than Aa3 or a

Standard & Poor's Ratings Services Financial Strength rating not lower than AA-.

The authority may impose a minimum credit score requirement for borrowers if the authority determines that such a requirement is standard and customary in the single family mortgage loan industry and is necessary to protect the authority's financial interests.

13VAC10-40-20. Origination and servicing of mortgage loans.

A. The originating of mortgage loans and the processing of applications for the making or financing thereof in accordance herewith shall, except as noted in subsection G of this section, be performed through commercial banks, savings and loan associations, private mortgage bankers, redevelopment and housing authorities, and agencies of local government approved as originating agents ("originating agents") of the authority. The servicing of mortgage loans shall, except as noted in subsection H of this section, be performed through commercial banks, savings and loan associations and private mortgage bankers approved as servicing agents ("servicing agents") of the authority.

To be initially approved as an originating agent or as a servicing agent and to continue to be so approved, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia and be licensed as a mortgage lender or broker, as applicable, under the Virginia Mortgage Lender and Broker Act as set forth in Chapter 16 (§ 6.1-408 et seq.) of Title 6.1 of the Code of Virginia (including nonprofit corporations that may be exempt from licensing when making mortgage loans on their own behalf under subdivision 4 of § 6.1-411 of the Code of Virginia); provided, however, that such licensing requirement shall not apply to persons exempt from licensure under:

a. Subdivision 2 of § 6.1-411 of the Code of Virginia (any person subject to the general supervision of or subject to examination by the Commissioner of the Bureau of Financial Institutions of the Virginia State Corporation Commission);

b. Subdivision 3 of § 6.1-411 of the Code of Virginia (any lender authorized to engage in business as a bank, savings institution or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, and subsidiaries and affiliates of such entities, which lender, subsidiary or affiliate is subject to the general supervision or regulation of or subject to audit or examination by a regulatory body or agency of the United States, any state or territory of the United States, or the District of Columbia); or

c. Subdivision 5 of § 6.1-411 of the Code of Virginia (agencies of the federal government, or any state or municipal government, or any quasi-governmental agency making or brokering mortgage loans under the specific authority of the laws of any state or the United States).

2. Have a net worth equal to or in excess of $500,000 or such other amount as the executive director shall from time to time deem appropriate, except that this qualification requirement shall not apply to redevelopment and housing authorities and agencies of local government;

3. Have a staff with demonstrated ability and experience in mortgage loan origination, underwriting, processing and closing (in the case of an originating agent applicant) or servicing (in the case of a servicing agent applicant);

4. To be approved as an originating agent, have a physical office located in Virginia that is open to the general public during commercially reasonable business hours, staffed with individuals qualified to take mortgage loan applications, and to which the general public may physically go to make an application for a mortgage loan;

5. To be approved as an originating agent, be eligible to, and have a staff qualified to (as set forth in subdivision 3 of this subsection), originate mortgage loans under all of the authority's single-family mortgage loan programs (not including the Rural Development loan program);

6. Have a fidelity bond and mortgage errors and omissions coverage in an amount at least equal to $500,000 and provide the authority a certificate from the insurance carrier naming the authority as a party in interest to the bond, or the policies or bonds shall name the authority as one of the parties insured. The policy's deductible clause may be for any amount up to the greater of $100,000 or 5.0% of the face amount of the policy;

7. Have a past history of satisfactory performance in the authority's and other mortgage lenders', insurers', guarantors' and investors' mortgage programs that, in the determination of the executive director, demonstrates that the applicant will be capable of meeting its obligations under the authority's programs, and provided further that, any applicant that has been previously terminated as an originating by the Authority shall not be eligible to reapply for 24 months after the effective date of such termination; and

8. Meet such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

~~Notwithstanding the foregoing, any applicant that has been approved and has entered into a servicing or origination agreement as of November 13, 2007, but that does not meet the above requirements, shall have until March 31, 2009, to comply with such requirements.~~

Notwithstanding the foregoing, in the event that the executive director determines that it is reasonable or necessary (after taking into consideration the number of existing origination and servicing agents, the current and expected level of loan production and demand for mortgage loans, and the current and expected resources available to the authority to make mortgage loans) to cease approving additional originating and servicing agents, the authority may at any time decline to accept further applications and to approve applications previously submitted.

Each originating agent approved by the authority shall enter into an originating agreement ("originating agreement"), with the authority containing such terms and conditions as the executive director shall require with respect to the origination and processing of mortgage loans hereunder. Each servicing agent approved by the authority shall enter into a servicing agreement with the authority containing such terms and conditions as the executive director shall require with respect to the servicing of mortgage loans.

An applicant may be approved as both an originating agent and a servicing agent ("originating and servicing agent"). Each originating and servicing agent shall enter into both an originating agreement and a servicing agreement.

Once such agreements are executed, continued participation in the authority's programs shall be subject to the terms and conditions in such agreements.

For the purposes of this chapter, the term "originating agent" shall hereinafter be deemed to include the term "originating and servicing agent," unless otherwise noted or the context indicates otherwise. The term "servicing agent" shall continue to mean an agent authorized only to service mortgage loans.

Originating agents and servicing agents shall maintain adequate books and records with respect to mortgage loans which they originate and process or service, as applicable, shall permit the authority to examine such books and records, and shall submit to the authority such reports (including annual financial statements) and information as the authority may require. The fees payable to the originating agents and servicing agents for originating and processing or for servicing mortgage loans hereunder shall be established from time to time by the executive director and shall be set forth in the originating agreements and servicing agreements applicable to such originating agents and servicing agents.

B. The executive director shall allocate funds for the making or financing of mortgage loans hereunder in such manner, to such persons and entities, in such amounts, for such period, and subject to such terms and conditions as he shall deem appropriate to best accomplish the purposes and goals of the authority. Without limiting the foregoing, the executive director may allocate funds (i) to mortgage loan applicants on a first-come, first-serve or other basis, (ii) to originating agents and state and local government agencies and instrumentalities for the origination of mortgage loans to qualified applicants and/or (iii) to builders for the permanent financing of residences constructed or rehabilitated or to be constructed or rehabilitated by them and to be sold to qualified applicants. In determining how to so allocate the funds, the executive director may consider such factors as he deems relevant, including any of the following:

1. The need for the expeditious commitment and disbursement of such funds for mortgage loans;

2. The need and demand for the financing of mortgage loans with such funds in the various geographical areas of the Commonwealth;

3. The cost and difficulty of administration of the allocation of funds;

4. The capability, history and experience of any originating agents, state and local governmental agencies and instrumentalities, builders, or other persons and entities (other than mortgage loan applicants) who are to receive an allocation; and

5. Housing conditions in the Commonwealth.

In the event that the executive director shall determine to make allocations of funds to builders as described above, the following requirements must be satisfied by each such builder:

1. The builder must have a valid contractor's license in the Commonwealth;

2. The builder must have at least three years' experience of a scope and nature similar to the proposed construction or rehabilitation; and

3. The builder must submit to the authority plans and specifications for the proposed construction or rehabilitation which are acceptable to the authority.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for allocation of funds hereunder. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which funds of the authority are to be allocated and such other matters as he shall deem appropriate relating thereto. The authority may also consider and approve applications for allocations of funds submitted from time to

time to the authority without any solicitation therefor on the part of the authority.

C. This chapter constitutes a portion of the originating guide of the authority. The ~~processing~~ originating guide and all exhibits and other documents referenced herein are not included in, and shall not be deemed to be a part of this chapter. The executive director is authorized to prepare and from time to time revise ~~a processing~~ an originating guide and a servicing guide which shall set forth the accounting and other procedures to be followed by all originating agents and servicing agents responsible for the origination, closing and servicing of mortgage loans under the applicable originating agreements and servicing agreements. Copies of the ~~processing~~ originating guide and the servicing guide shall be available upon request. The executive director shall be responsible for the implementation and interpretation of the provisions of the originating guide (including the ~~processing~~ originating guide) and the servicing guide.

D. The authority may from time to time (i) make mortgage loans directly to mortgagors with the assistance and services of its originating agents and (ii) agree to purchase individual mortgage loans from its originating agents or servicing agents upon the consummation of the closing thereof. The review and processing of applications for such mortgage loans, the issuance of mortgage loan commitments therefor, the closing and servicing (and, if applicable, the purchase) of such mortgage loans, and the terms and conditions relating to such mortgage loans shall be governed by and shall comply with the provisions of the applicable originating agreement or servicing agreement, the originating guide, the servicing guide, the Act and this chapter.

If the applicant and the application for a mortgage loan meet the requirements of the Act and this chapter, the executive director may issue on behalf of the authority a mortgage loan commitment to the applicant for the financing of the single family dwelling unit. Such mortgage loan commitment shall be issued only upon the determination of the authority that such a mortgage loan is not otherwise available from private lenders upon reasonably equivalent terms and conditions, and such determination shall be set forth in the mortgage loan commitment. The original principal amount and term of such mortgage loan, the amortization period, the terms and conditions relating to the prepayment thereof, and such other terms, conditions and requirements as the executive director deems necessary or appropriate shall be set forth or incorporated in the mortgage loan commitment issued on behalf of the authority with respect to such mortgage loan.

E. The authority may purchase from time to time existing mortgage loans with funds held or received in connection with bonds issued by the authority prior to January 1, 1981, or with other funds legally available therefor. With respect to any such purchase, the executive director may request and solicit bids or proposals from the authority's originating agents and servicing agents for the sale and purchase of such mortgage loans, in such manner, within such time period and subject to such terms and conditions as he shall deem appropriate under the circumstances. The sales prices of the single family housing units financed by such mortgage loans, the gross family incomes of the mortgagors thereof, and the original principal amounts of such mortgage loans shall not exceed such limits as the executive director shall establish, subject to approval or ratification by resolution of the board. The executive director may take such action as he deems necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to originating agents and servicing agents, advertising in newspapers or other publications and any other method of public announcement which he may select as appropriate under the circumstances. After review and evaluation by the executive director of the bids or proposals, he shall select those bids or proposals that offer the highest yield to the authority on the mortgage loans (subject to any limitations imposed by law on the authority) and that best conform to the terms and conditions established by him with respect to the bids or proposals. Upon selection of such bids or proposals, the executive director shall issue commitments to the selected originating agents and servicing agents to purchase the mortgage loans, subject to such terms and conditions as he shall deem necessary or appropriate. Upon satisfaction of the terms of the commitments, the executive director shall execute such agreements and documents and take such other action as may be necessary or appropriate in order to consummate the purchase and sale of the mortgage loans. The mortgage loans so purchased shall be serviced in accordance with the applicable originating agreement or servicing agreement and the servicing guide. Such mortgage loans and the purchase thereof shall in all respects comply with the Act and the authority's rules and regulations.

F. The executive director may, in his discretion, delegate to one or more originating agents all or some of the responsibility for underwriting, issuing commitments for mortgage loans and disbursing the proceeds hereof without prior review and approval by the authority. The executive director may delegate to one or more servicing agents all or some of the responsibility for underwriting and issuing commitments for the assumption of existing authority mortgage loans without prior review and approval by the authority. If the executive director determines to make any such delegation, he shall establish criteria under which originating agents may qualify for such delegation. If such delegation has been made, the originating agents shall submit all required documentation to the authority at such time as the authority may require. If the executive director determines that a mortgage loan does not comply with any requirement under the originating guide, the applicable originating agreement, the Act or this chapter for which the originating agent was delegated responsibility, he may require the

originating agents to purchase such mortgage loan, subject to such terms and conditions as he may prescribe.

G. The authority may utilize financial institutions, mortgage brokers and other private firms and individuals and governmental entities ("field originators") approved by the authority for the purpose of receiving applications for mortgage loans. To be approved as a field originator, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia;

2. Have made any necessary filings or registrations and have received any and all necessary approvals or licenses in order to receive applications for mortgage loans in the Commonwealth of Virginia;

3. Have the demonstrated ability and experience in the receipt and processing of mortgage loan applications; and

4. Have such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Each field originator approved by the authority shall enter into such agreement as the executive director shall require with respect to the receipt of applications for mortgage loans. Field originators shall perform such of the duties and responsibilities of originating agents under this chapter as the authority may require in such agreement.

Field originators shall maintain adequate books and records with respect to mortgage loans for which they accept applications, shall permit the authority to examine such books and records, and shall submit to the authority such reports and information as the authority may require. The fees to the field originators for accepting applications shall be payable in such amount and at such time as the executive director shall determine.

In the case of mortgage loans for which applications are received by field originators, the authority may process and originate the mortgage loans; accordingly, unless otherwise expressly provided, the provisions of this chapter requiring the performance of any action by originating agents shall not be applicable to the origination and processing by the authority of such mortgage loans, and any or all of such actions may be performed by the authority on its own behalf.

H. The authority may service mortgage loans for which the applications were received by field originators or any mortgage loan which, in the determination of the authority, originating agents and servicing agents will not service on terms and conditions acceptable to the authority or for which the originating agent or servicing agent has agreed to terminate the servicing thereof.

13VAC10-40-40. Compliance with certain requirements of the Internal Revenue Code of 1986, as amended ("the tax code").

The tax code imposes certain requirements and restrictions on the eligibility of mortgagors and residences for financing with the proceeds of tax-exempt bonds (as well as requirements and restrictions on the assumption of mortgage loans so financed). In order to comply with these federal requirements and restrictions, the authority has established certain procedures which must be performed by the originating agent in order to determine such eligibility. The eligibility requirements for the borrower or the borrowers and the dwelling are described below as well as the procedures to be performed. The originating agent will perform these procedures and evaluate a borrower's or borrowers' eligibility prior to the authority's approval of each loan. No loan will be approved by the authority unless all of the federal eligibility requirements are met as well as the usual requirements of the authority set forth in other parts of this originating guide.

The executive director may apply some or all of the above-referenced tax exempt bond requirements and restrictions to authority mortgage loans that are not funded with tax exempt bonds if the executive director determines that such requirement and restrictions are necessary to enable the authority to effectively and efficiently allocate its current and anticipated financial resources so as to best meet the current and future housing needs of the citizens throughout the Commonwealth.

13VAC10-40-50. Eligible borrowers.

A. In order to be considered eligible for an authority mortgage loan, an applicant must, among other things, meet all of the following federal criteria:

1. Each applicant must not have had a present ownership interest in his principal residence within the three years preceding the date of execution of the mortgage loan documents (see subsection B of this section);

2. Each applicant must agree to occupy and use the residential property to be purchased as his permanent, principal residence within 60 days (90 days in the case of a rehabilitation loan as described in 13VAC10-40-200) after the date of the closing of the mortgage loan (see subsection C of this section);

3. Each applicant must not use the proceeds of the mortgage loan to acquire or replace an existing mortgage or debt, except in the case of certain types of temporary financing (see subsection D of this section);

4. Each applicant must have contracted to purchase an eligible dwelling (see 13VAC10-40-60, Eligible dwellings);

5. Each applicant must execute an affidavit of borrower (Exhibit E) at the time of loan application;

6. The applicant or applicants must not receive income in an amount in excess of the applicable federal income limit imposed by the tax code (see 13VAC10-40-100, Maximum gross income);

7. Each applicant must agree not to sell, lease or otherwise transfer an interest in the residence or permit the assumption of his mortgage loan unless certain requirements are met (see 13VAC10-40-140, Loan assumptions); and

8. Each applicant must be over the age of 18 years or have been declared emancipated by order or decree of a court having jurisdiction.

B. An eligible borrower does not include any borrower who, at any time during the three years preceding the date of execution of the mortgage loan documents, had a "present ownership interest" (as hereinafter defined) in his principal residence. Each borrower must certify on the affidavit of borrower that at no time during the three years preceding the execution of the mortgage loan documents has he had a present ownership interest in his principal residence. This requirement does not apply to residences located in "targeted areas" (see 13VAC10-40-70, Targeted areas); however, even if the residence is located in a "targeted area," the tax returns for the most recent taxable year (or the letter described in subdivision 3 below) must be obtained for the purpose of determining compliance with other requirements.

1. "Present ownership interest" includes:

a. A fee simple interest,

b. A joint tenancy, a tenancy in common, or a tenancy by the entirety,

c. The interest of a tenant shareholder in a cooperative,

d. A life estate,

e. A land contract, under which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some later time, and

f. An interest held in trust for the eligible borrower (whether or not created by the eligible borrower) that would constitute a present ownership interest if held directly by the eligible borrower.

Interests which do not constitute a present ownership interest include:

a. A remainder interest,

b. An ordinary lease with or without an option to purchase,

c. A mere expectancy to inherit an interest in a principal residence,

d. The interest that a purchaser of a residence acquires on the execution of an accepted offer to purchase real estate, and

e. An interest in other than a principal residence during the previous three years.

2. This requirement applies to any person who will execute the mortgage document or note and will have a present ownership interest (as defined above) in the eligible dwelling.

3. To verify that each eligible borrower meets the three-year requirement, the originating agent must obtain copies of signed federal income tax returns filed by the eligible borrower for the three tax years immediately preceding execution of the mortgage documents (or certified copies of the returns) or a copy of a letter from the Internal Revenue Service stating that its Form 1040A or 1040EZ was filed by the eligible borrower for any of the three most recent tax years for which copies of such returns are not obtained. If the eligible borrower was not required by law to file a federal income tax return for any of these three years and did not so file, and so states on the borrower affidavit, the requirement to obtain a copy of the federal income tax return or letter from the Internal Revenue Service for such year or years is waived.

The originating agent shall examine the tax returns particularly for any evidence that an eligible borrower may have claimed deductions for property taxes or for interest on indebtedness with respect to real property constituting his principal residence.

4. The originating agent must, with due diligence, verify the representations in the affidavit of borrower (Exhibit E) regarding each eligible borrower's prior residency by reviewing any information including the credit report and the tax returns furnished by each eligible borrower for consistency, and make a determination that on the basis of its review each borrower has not had present ownership interest in a principal residence at any time during the three-year period prior to the anticipated date of the loan closing.

C. Each eligible borrower must intend at the time of closing to occupy the eligible dwelling as a principal residence within 60 days (90 days in the case of a purchase and rehabilitation loan) after the closing of the mortgage loan. Unless the residence can reasonably be expected to become the principal residence of each eligible borrower within 60 days (90 days in the case of a purchase and rehabilitation loan) of the mortgage loan closing date, the residence will not be considered an eligible dwelling and may not be financed with a mortgage loan from the authority. Each eligible borrower must covenant to intend to occupy the eligible dwelling as a principal residence within 60 days (90 days in the case of a purchase and rehabilitation loan) after the closing of the

mortgage loan on the affidavit of borrower (to be updated ~~by~~ at the ~~verification and update of information form)~~ closing of the mortgage loan) and as part of the attachment to the deed of trust.

1. A principal residence does not include any residence which can reasonably be expected to be used: (i) primarily in a trade or business, (ii) as an investment property, or (iii) as a recreational or second home. A residence may not be used in a manner which would permit any portion of the costs of the eligible dwelling to be deducted as a trade or business expense for federal income tax purposes or under circumstances where more than 15% of the total living area is to be used primarily in a trade or business.

2. The land financed by the mortgage loan may not provide, other than incidentally, a source of income to an eligible borrower. Each eligible borrower must indicate on the affidavit of borrower that, among other things:

a. No portion of the land financed by the mortgage loan provides a source of income (other than incidental income);

b. He does not intend to farm any portion (other than as a garden for personal use) of the land financed by the mortgage loan; and

c. He does not intend to subdivide the property.

3. Only such land as is reasonably necessary to maintain the basic liveability of the residence may be financed by a mortgage loan. The financed land must not exceed the customary or usual lot in the area. Generally, the financed land will not be permitted to exceed two acres, even in rural areas. However, exceptions may be made to permit lots larger than two acres, but in no event in excess of five acres: (i) if the land is owned free and clear and is not being financed by the loan, the lot may be as large as five acres, (ii) if difficulty is encountered locating a well or septic field, the lot may include the additional acreage needed, (iii) local city and county ordinances which require more acreage will be taken into consideration, or (iv) if the lot size is determined by the authority, based upon objective information provided by the borrower, to be usual and customary in the area for comparably priced homes.

4. The affidavit of borrower (Exhibit E) must be reviewed by the originating agent for consistency with each eligible borrower's federal income tax returns and the credit report, and the originating agent must, based on such review, make a determination that each borrower has not used any previous residence or any portion thereof primarily in any trade or business.

5. The originating agent shall establish procedures to (i) review correspondence, checks and other documents received from the borrower or borrowers during the 120-day period following the loan closing for the purpose of ascertaining that the address of the residence and the address of the borrower or borrowers are the same and (ii) notify the authority if such addresses are not the same. Subject to the authority's approval, the originating agent may establish different procedures to verify compliance with this requirement.

D. Mortgage loans may be made only to an eligible borrower who did not have a mortgage (whether or not paid off) on the eligible dwelling at any time prior to the execution of the mortgage. Mortgage loan proceeds may not be used to acquire or replace an existing mortgage or debt for which an eligible borrower is liable or which was incurred on behalf of an eligible borrower, except in the case of construction period loans, bridge loans or similar temporary financing which has a term of 24 months or less.

1. For purposes of applying the new mortgage requirement, a mortgage includes deeds of trust, conditional sales contracts (i.e. generally a sales contract pursuant to which regular installments are paid and are applied to the sales price), pledges, agreements to hold title in escrow, a lease with an option to purchase which is treated as an installment sale for federal income tax purposes and any other form of owner-financing. Conditional land sale contracts shall be considered as existing loans or mortgages for purposes of this requirement.

2. In the case of a mortgage loan (having a term of 24 months or less) made to refinance a loan for the construction of an eligible dwelling, the authority shall not make such mortgage loan until it has determined that such construction has been satisfactorily completed.

3. Prior to closing the mortgage loan, the originating agent must examine the affidavit of borrower (Exhibit E), the affidavit of seller (Exhibit F), and related submissions, including (i) each eligible borrower's federal income tax returns for the preceding three years, and (ii) credit report, in order to determine whether the eligible borrower will meet the new mortgage requirements. Based upon such review, the originating agent shall make a determination that the proceeds of the mortgage loan will not be used to repay or refinance an existing mortgage debt of any borrower and that each borrower did not have a mortgage loan on the eligible dwelling prior to the date hereof, except for permissible temporary financing described above.

E. Any eligible borrower may not have more than one outstanding authority first mortgage loan.

13VAC10-40-120. Mortgage insurance requirements.

Unless the loan is an FHA, VA or Rural Development loan, the borrower or borrowers are required to purchase at time of loan closing full private mortgage insurance (in an amount equal to the percentage of the loan that exceeds 80% of the

lesser or sales price or appraised value of the property or such higher percentage as the executive director may determine is necessary to protect the authority's financial interests) on each loan the amount of which exceeds 80% of the lesser of sales price or appraised value of the property to be financed. Such insurance shall be issued by a company acceptable to the authority. The originating agent is required to escrow for annual payment of mortgage insurance, unless an alternative payment plan is approved by the authority. If the authority requires FHA, VA or Rural Development insurance or guarantee, the loan will either, at the election of the authority, (a) be closed in the authority's name in accordance with the procedures and requirements herein or (b) be closed in the originating agent's name and purchased by the authority once the FHA Certificate of Insurance, VA Guaranty or Rural Development Guarantee has been obtained or subject to the condition that such FHA Certificate of Insurance, VA Guaranty or Rural Development Guarantee be obtained. In the event that the authority purchases an FHA, VA or Rural Development loan, the originating agent must enter into a purchase and sale agreement on such form as shall be provided by the authority. For assumptions of conventional loans (i.e., loans other than FHA, VA or Rural Development loans), full private mortgage insurance as described above is required unless waived by the authority.

The executive director may waive the requirements for private mortgage insurance in the preceding paragraph for a loan having a principal amount in excess of 80% of the lesser of sales price or appraised value of the property to be financed if the applicant satisfies the criteria set forth in subdivisions 11 through 17 of 13VAC10-40-230 or if the executive director otherwise determines that the financial integrity of the program is protected by the financial strength of the applicant or applicants or the terms of the financing.

If the executive director determines it to be necessary to protect the authority's financial interests, the executive director may require that the company issuing such private mortgage insurance have a Moody's Investors Service Insurance Financial Strength rating not lower than Aa3 or a Standard & Poor's Ratings Services Financial Strength rating not lower than AA-.

13VAC10-40-130. Underwriting.

A. In general, to be eligible for authority financing, an applicant or applicants must satisfy the following underwriting criteria which demonstrate the willingness and ability to repay the mortgage debt and adequately maintain the financed property.

1. The applicant or applicants must document the receipt of a stable current income which indicates that the applicant or applicants will receive future income which is sufficient to enable the timely repayment of the mortgage loan as well as other existing obligations and living expenses.

2. The applicant or, in the case of multiple applicants, the applicants individually and collectively must possess a credit history which reflects the ability to successfully meet financial obligations and a willingness to repay obligations in accordance with established credit repayment terms.

3. An applicant having a foreclosure instituted by the authority on his property financed by an authority mortgage loan will not be eligible for a mortgage loan hereunder. The authority will consider previous foreclosures (other than on authority financed loans) on an exception basis based upon circumstances surrounding the cause of the foreclosure, length of time since the foreclosure, the applicant's subsequent credit history and overall financial stability. Under no circumstances will an applicant be considered for an authority loan within three years from the date of the foreclosure. The authority has complete discretion to decline to finance a loan when a previous foreclosure is involved.

4. The applicant or applicants must document that sufficient funds will be available for required down payment and closing costs.

a. The terms and sources of any loan to be used as a source for down payment or closing costs must be reviewed and approved in advance of loan approval by the authority.

b. Sweat equity, the imputed value of services performed by an eligible borrower or members of his family (brothers and sisters, spouse, ancestors and lineal descendants) in constructing or completing the residence, generally is not an acceptable source of funds for down payment and closing costs. Any sweat equity allowance must be approved by the authority prior to loan approval.

5. Proposed monthly housing expenses compared to current monthly housing expenses will be reviewed. If there is a substantial increase in such expenses, the applicant or applicants must demonstrate his ability to pay the additional expenses.

6. All applicants are encouraged to attend a home ownership educational program to be better prepared to deal with the home buying process and the responsibilities related to homeownership. The authority may require all applicants applying for certain authority loan programs to complete an authority approved homeownership education program prior to loan approval.

B. In addition to the requirements set forth in subsection A of this section, the following requirements must be met in order to satisfy the authority's underwriting requirements for conventional loans. However, additional or more stringent requirements may be imposed (i) by private mortgage insurance companies with respect to those loans on which private mortgage insurance is required ~~or~~; (ii) on loans as described in the last paragraph of 13VAC10-40-120; or (iii)

on loans that may be sold by the authority to an investor (including, without limitation, Fannie Mae, Freddie Mac, and Ginnie Mae) in which case such additional or more stringent requirements of the investor will apply.

1. The following rules apply to the authority's employment and income requirement.

a. Employment for the preceding two-year period must be documented. Education or training for employment during this two-year period shall be considered in satisfaction of this requirement if such education or training is related to an applicant's current line of work and adequate future income can be anticipated because such education and training will expand the applicant's job opportunities. The applicant must be employed a minimum of six months with present employer. An exception to the six-month requirement can be granted by the authority if it can be determined that the type of work is similar to previous employment and previous employment was of a stable nature.

b. Note: Under the tax code, the residence may not be expected to be used in trade or business. (See 13VAC10-40-50 C.) Any self-employed applicant must have a minimum of two years of self-employment with the same company and in the same line of work. In addition, the following information is required at the time of application:

(1) Federal income tax returns for the two most recent tax years.

(2) Balance sheets and profit and loss statements prepared by an independent public accountant.

In determining the income for a self-employed applicant, income will be averaged for the two-year period.

c. The following rules apply to income derived from sources other than primary employment.

(1) When considering alimony and child support. A copy of the legal document and sufficient proof must be submitted to the authority verifying that alimony and child support are court ordered and are being received. Child support payments for children 15 years or older are not accepted as income in qualifying an applicant or applicants for a loan.

(2) When considering social security and other retirement benefits. Social Security Form No. SSA 2458 must be submitted to verify that applicant is receiving social security benefits. Retirement benefits must be verified by receipt or retirement schedules. VA disability benefits must be verified by the VA. Educational benefits and social security benefits for dependents 15 years or older are not accepted as income in qualifying an applicant or applicants for a loan.

(3) All part-time employment must be continuous for a minimum of 24 months, except that the authority may consider part-time employment that is continuous for more than 12 months but less than 24 months if such part-time employment is of a stable nature and is likely to continue after closing of the mortgage loan.

(4) Overtime earnings must be guaranteed by the employer or verified for a minimum of two years. Bonus and commissions must be reasonably predictable and stable and the applicant's employer must submit evidence that they have been paid on a regular basis and can be expected to be paid in the future.

2. The following rules apply to each applicant's credit:

a. The authority requires that an applicant's previous credit experience be satisfactory. Poor credit references without an acceptable explanation will cause a loan to be rejected. Satisfactory credit references and history are considered to be important requirements in order to obtain an authority loan. The executive director may impose a minimum credit score requirement if the executive director determines that such a requirement is standard and customary in the single family mortgage loan industry and is necessary to protect the authority's financial interests.

b. An applicant will not be considered for a loan if the applicant has been adjudged bankrupt within the past two years. If longer than two years, the applicant must submit a written explanation giving details surrounding the bankruptcy. The authority has complete discretion to decline a loan when a bankruptcy is involved.

c. An applicant is required to submit a written explanation for all judgments and collections. In most cases, judgments and collections must be paid before an applicant will be considered for an authority loan.

3. The authority reserves the right to obtain an independent appraisal in order to establish the fair market value of the property and to determine whether the dwelling is eligible for the mortgage loan requested.

4. The applicant or applicants satisfy the authority's minimum income requirement for financing if the monthly principal and interest (at the rate determined by the authority), tax, insurance ("PITI") and other additional monthly fees such as condominium association fees (excluding unit utility charges), townhouse assessments, etc. do not exceed 32% of monthly gross income and if the monthly PITI plus outstanding monthly debt payments with more than 10 months duration (and payments on debts lasting less than 10 months, if making such payments will adversely affect the applicant's or applicants' ability to make mortgage loan payments in the months following loan closing) do not exceed 40% of monthly gross income (see Exhibit B). However, with respect to those mortgage

loans on which private mortgage insurance is required, the private mortgage insurance company may impose more stringent requirements. If either of the percentages set forth are exceeded, compensating factors may be used by the authority, in its sole discretion, to approve the mortgage loan.

5. Funds necessary to pay the downpayment and closing costs must be deposited at the time of loan application. The authority does not permit an applicant to borrow funds for this purpose unless approved in advance by the authority. If the funds are being held in an escrow account by the real estate broker, builder or closing attorney, the source of the funds must be verified. A verification of deposit from the parties other than financial institutions authorized to handle deposited funds is not acceptable.

6. The applicant may receive a gift from only a relative, employer or nonprofit entity not involved in the transfer or financing of the property. The individual(s) making the gift must provide a letter to the authority confirming that the transfer of funds is a gift with no obligation on the part of an applicant to repay the funds at any time. The party making the gift must submit proof that the funds are available. The executive director may approve gifts from other sources provided the executive director determines that such transfer of funds to the applicant is not subject to repayment by the applicant and is not made in consideration of any past or future obligation of the applicant or in consideration of any terms of the property transfer or mortgage loan transaction.

7. Seller contributions for settlement or financing costs (including closing costs, discount points and upfront mortgage insurance premiums) may not exceed the lesser of 6.0% of the sales price or the amount permitted by the applicable mortgage insurer guidelines.

C. The following rules are applicable to FHA loans only.

1. The authority will normally accept FHA underwriting requirements and property standards for FHA loans. However, the applicant or applicants must satisfy the underwriting criteria set forth in subsection A of this section and most of the authority's basic eligibility requirements including those described in 13VAC10-40-30 through 13VAC10-40-100 hereof remain in effect due to treasury restrictions or authority policy. In addition, the executive director may impose one or more of the requirements of subsection B of this section to FHA loans on the same or less stringent basis as they apply to the authority's conventional loans if the executive director determines that such requirements are necessary to protect its financial interests.

2. The applicant's or applicants' mortgage insurance premium fee may be included in the FHA acquisition cost and may be financed provided that the final loan amount does not exceed the authority's maximum allowable sales price. In addition, in the case of a condominium, such fee may not be paid in full in advance but instead is payable in annual installments.

3. The FHA allowable closing fees may be included in the FHA acquisition cost and may be financed provided the final loan amount does not exceed the authority's maximum allowable sales price.

4. FHA appraisals are acceptable. VA certificates of reasonable value (CRV's) are acceptable if acceptable to FHA.

D. The following rules are applicable to VA loans only.

1. The authority will normally accept VA underwriting requirements and property guidelines for VA loans. However, the applicant or applicants must satisfy the underwriting criteria set forth in subsection A of this section and most of the authority's basic eligibility requirements (including those described in 13VAC10-40-30 through 13VAC10-40-100) remain in effect due to treasury restrictions or authority policy. In addition, the executive director may impose one or more of the requirements of subsection B of this section to VA loans on the same or less stringent basis as they apply to the authority's conventional loans if the executive director determines that such requirements are necessary to protect its financial interests.

2. The funding fee can be included in loan amount provided the final loan amount does not exceed the authority's maximum allowable sales price.

3. VA certificates of reasonable value (CRV's) are acceptable in lieu of an appraisal.

E. The following rules are applicable to Rural Development loans only.

1. The authority will normally accept Rural Development underwriting requirements and property standards for Rural Development loans. However, the applicant or applicants must satisfy the underwriting criteria set forth in subsection A of this section and most of the authority's basic eligibility requirements including those described in 13VAC10-40-30 through 13VAC10-40-100 remain in effect due to treasury restrictions or authority policy. In addition, the executive director may impose one or more of the requirements of subsection B of this section to Rural Development loans on the same or less stringent basis as they apply to the authority's conventional loans if the executive director determines that such requirements are necessary to protect its financial interests.

2. The Rural Development guarantee fee can be included in loan amount provided the final loan amount does not exceed the authority's maximum allowable sales price.

F. With respect to FHA, VA, RD and conventional loans, the authority permits the deposit of a sum of money (the "buydown funds") by a party (the "provider") with an escrow agent, a portion of which funds are to be paid to the authority each month in order to reduce the amount of the borrower's or borrowers' monthly payment during a certain period of time. Such arrangement is governed by an escrow agreement for buydown mortgage loans (see Exhibit V) executed at closing (see 13VAC10-40-180 for additional information). The escrow agent will be required to sign a certification (Exhibit X) in order to satisfy certain insurer or guarantor requirements. For the purposes of underwriting buydown mortgage loans, the reduced monthly payment amount may be taken into account based on insurer or guarantor guidelines then in effect (see also subsection C, D or E of this section, as applicable).

G. Unlike the program described in subsection E of this section which permits a direct buydown of the borrower's or borrowers' monthly payment, the authority also from time to time permits the buydown of the interest rate on a conventional, FHA or VA mortgage loan for a specified period of time.

13VAC10-40-140. Loan assumptions.

A. VHDA ~~currently permits~~ may from time to time, in its discretion, permit assumptions of all or some of its single family mortgage loans ~~provided that certain~~, subject to satisfaction of the applicable requirements in this section; provided, however, that assumptions shall be permitted when required by the mortgage insurer or guarantor rules or applicable law if the applicable requirements in this section are met. For all loans closed prior to January 1, 1991, except FHA loans which were closed during calendar year 1990, the maximum gross income for the person or persons assuming a loan shall be 100% of the applicable median family income. For such FHA loans closed during 1990, if assumed by a household of three or more persons, the maximum gross income shall be 115% of the applicable median family income (140% for a residence in a targeted area) and if assumed by a household of fewer than three persons, the maximum gross income shall be 100% of the applicable median family income (120% for a residence in a targeted area). For all loans closed after January 1, 1991, the maximum gross income for the person or persons assuming loans shall be the highest percentage, as then in effect under 13VAC10-40-100 A, of applicable median family income for the number or persons to occupy the dwelling upon assumption of the mortgage loan, unless otherwise provided in the deed of trust. The requirements for each of the two different categories of mortgage loans listed below (and the subcategories within each) are as follows:

1. The following rules apply to assumptions of conventional loans, if permitted by the authority.

a. For assumptions of conventional loans financed by the proceeds of bonds issued on or after December 17, 1981, the requirements of the following sections hereof must be met:

(1) Maximum gross income requirement in 13VAC10-40-140 A

(2) 13VAC10-40-50 C (Principal residence requirement)

(3) 13VAC10-40-130 (Authority underwriting requirements)

(4) 13VAC10-40-50 B (Three-year requirement)

(5) 13VAC10-40-60 B (Acquisition cost requirements)

(6) 13VAC10-40-120 (Mortgage insurance requirements).

b. For assumptions of conventional loans financed by the proceeds of bonds issued prior to December 17, 1981, the requirements of the following sections hereof must be met:

(1) Maximum gross income requirement in 13VAC10-40-140 A

(2) 13VAC10-40-50 C (Principal residence requirements)

(3) 13VAC10-40-130 (Authority underwriting requirements)

(4) 13VAC10-40-120 (Mortgage insurance requirements).

2. The following rules apply to assumptions of FHA, VA or Rural Development loans, if permitted by the authority.

a. For assumptions of FHA, VA or Rural Development loans financed by the proceeds of bonds issued on or after December 17, 1981, the following conditions, if applicable, must be met:

(1) Maximum gross income requirement in this 13VAC10-40-140 A

(2) 13VAC10-40-50 C (Principal residence requirement)

(3) 13VAC10-40-50 B (Three-year requirement)

(4) 13VAC10-40-60 B (Acquisition cost requirements).

In addition, all applicable FHA, VA or Rural Development underwriting requirements, if any, must be met.

b. For assumptions of FHA, VA or Rural Development loans financed by the proceeds of bonds issued prior to December 17, 1981, only the applicable FHA, VA or Rural Development underwriting requirements, if any, must be met.

B. ~~Upon receipt from an originating agent or servicing agent of an application package for~~ If the authority will permit an assumption, the authority will determine whether or not the applicable requirements referenced above for assumption of the loan have been met and will advise the originating agent or servicing agent of such determination in writing. The authority will further advise the originating agent or servicing agent of all other requirements necessary to complete the assumption process. Such requirements may include but are not limited to the submission of satisfactory evidence of hazard insurance coverage on the property, approval of the deed of assumption, satisfactory evidence of mortgage insurance or mortgage guaranty including, if applicable, pool insurance, submission of an escrow transfer letter and execution of a Recapture Requirement Notice (VHDA Doc. R-1).

13VAC10-40-160. Reservations/fees.

A. The authority currently reserves funds for each mortgage loan on a first come, first serve basis. Reservations are made by specific originating agents or field originators with respect to specific applicants and properties. No substitutions are permitted. Similarly, locked-in interest rates are also nontransferable. However, if the applicant can document circumstances beyond the applicant's control constituting good cause, the executive director may permit such substitution and transfer. Funds will not be reserved longer than 60 days unless the originating agent requests and receives an additional one-time extension prior to the 60-day deadline; provided, however, the foregoing time periods may be shortened by the executive director as he deems necessary if the mortgage loan is to be sold by the authority to an investor (including, without limitation, Fannie Mae, Freddie Mac, and Ginnie Mae). Locked-in interest rates on all loans, including those on which there may be a VA Guaranty, cannot be reduced under any circumstances.

B. The applicant or applicants, including an applicant or applicants for a loan to be guaranteed by VA, may request a second reservation if the first has expired or has been cancelled. If the second reservation is made within 12 months of the date of the original reservation, the interest rate will be the greater of (i) the locked-in rate or (ii) the current rate offered by the authority at the time of the second reservation. However, if the applicant can document circumstances beyond the applicant's control constituting good cause, the executive director may waive the requirement in the preceding sentence.

C. The originating agent or field originator shall collect a nonrefundable reservation fee in such amount and according to such procedures as the authority may require from time to time. Under no circumstances is this fee refundable. A second reservation fee must be collected for a second reservation. No substitutions of applicants or properties are permitted.

D. The following other fees shall be collected.

1. In connection with the origination and closing of the loan, the originating agent shall collect at closing or, at the authority's option, simultaneously with the acceptance of the authority's commitment, an amount equal to 1.0% of the loan amount (please note that for FHA loans the loan amount for the purpose of this computation is the base loan amount only); provided, however, that the executive director may require the payment of an additional fee not in excess of 1.0% of the loan amount in the case of a step loan (i.e., a loan on which the initial interest rate is to be increased to a new interest rate after a fixed period of time). If the loan does not close, then the origination fee shall be waived.

2. The originating agent shall collect at the time of closing an amount equal to 1.0% of the loan amount.

If the executive director determines that the financial integrity of the program is protected by an adjustment to the rate of interest charged to the applicant or applicants or otherwise, the authority may provide the applicant or applicants with the option of an alternative fee requirement.

13VAC10-40-170. Commitment ~~(Exhibit J)~~.

A. Upon approval of the applicant or applicants, the authority will send a mortgage loan commitment to the borrower or borrowers in care of the originating agent. The originating agent shall ask the borrower or borrowers to indicate acceptance of the mortgage loan commitment by signing and returning it to the originating agent prior to settlement.

A commitment must be issued in writing by an authorized officer of the authority and signed by the applicant or applicants before a loan may be closed. The term of a commitment may be extended in certain cases upon written request by the applicant or applicants and approved by the authority. If an additional commitment is issued to an applicant or applicants, the interest rate may be higher than the rate offered in the original commitment and additional fees may be charged. Such new rate and the availability of funds therefor shall in all cases be determined by the authority in its discretion.

B. If the application fails to meet any of the standards, criteria and requirements herein, a loan rejection letter will be issued by the authority (see Exhibit L). In order to have the application reconsidered, the applicant or applicants must resubmit the application within 30 days after loan rejection. If the application is so resubmitted, the credit documentation cannot be more than 90 days old and the appraisal not more than six months old.

13VAC10-40-220. FHA plus program.

A. Notwithstanding anything to the contrary herein, the authority may make loans secured by second deed of trust liens ("second loans") to provide downpayment and closing

cost assistance to an eligible borrower or borrowers who are obtaining FHA loans secured by first deed of trust liens. Such first deed of trust liens must be financed by the authority; provided that the authority may, in its discretion, permit such first deeds of trust to be financed by other lenders, subject to such terms and conditions as the executive director shall determine to be necessary to protect the financial integrity of the FHA plus program. Second loans shall not be available to a borrower or borrowers if the FHA loan is being made under the FHA buydown program or is subject to a step adjustment in the interest rate thereon or is subject to a reduced interest rate due to the financial support of the authority.

B. The second loans shall not be insured by mortgage insurance; accordingly, the requirements of 13VAC10-40-120 regarding mortgage insurance shall not be applicable to the second loan.

C. The requirements of 13VAC10-40-110 regarding calculation of maximum loan amount shall not be applicable to the second loan. In order to be eligible for a second loan, the borrower or borrowers must obtain an FHA loan for the maximum loan amount permitted by FHA. The principal amount of the second loan shall not exceed 5.0% of the lesser of the sales price or appraised value, or such lesser percentage as may be determined by the executive director to protect the financial integrity of the FHA plus program.

In no event shall the combined FHA loan and the second loan amount exceed (i) the sum of the lesser of the sales price or appraised value plus closing costs and fees to be paid by borrower or (ii) the authority's maximum allowable sales price. The sum of all liens may not exceed 100% of the cost to acquire the property. The cost to acquire the property is the sales price plus allowable borrower paid closing costs, discount points and prepaid expenses.

Verified liquid funds (funds other than gifts, loans or retirement accounts) in an amount not less than 1.0% of the sales price must be: (i) contributed by the borrower or borrowers towards closing costs or prepaid items; (ii) retained by the borrower or borrowers as cash reserves after closing; or (iii) contributed and retained by the borrower or borrowers for the purposes of clauses (i) and (ii), respectively. ~~At the closing, the borrower or borrowers may not receive any loan proceeds in excess of the amount of funds paid by the borrower or borrowers prior to closing.~~ The FHA-insured first mortgage when combined with the FHA plus second mortgage and any other liens may not result in cash back to the borrower.

D. If the authority is not making the FHA loan secured by the first deed of trust lien, the authority may require that, as a condition of financing the FHA plus loan, the FHA loan secured by the first deed of trust lien meet the authority's requirements applicable to FHA loans. With respect to underwriting, ~~no additional~~ more stringent requirements or criteria ~~other~~ than those applicable to the FHA loan ~~shall~~ may be imposed on the second loan if the executive director determines such more stringent requirements or criteria are necessary to protect the financial integrity of the FHA plus program.

E. The second mortgage loan shall be assumable on the same terms and conditions as the FHA loan.

F. No origination fee or discount point shall be collected on the second loan; provided, however, that the authority may charge an origination fee and/or a discount point in an amount determined by the executive director to be necessary to compensate the authority for originating, processing, and closing the FHA plus loan, if the first deed of trust is to be financed by another lender.

G. Upon approval of the applicant or applicants, the authority will issue a mortgage loan commitment pursuant to 13VAC10-40-170. The mortgage loan commitment will include the terms and conditions of the FHA loan and the second loan and ~~an addendum setting~~ will set forth additional terms and conditions applicable to the second loan. Also enclosed in the commitment package will be other documents necessary to close the second loan.

VA.R. Doc. No. R09-1911; Filed June 5, 2009, 10:09 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Proposed Regulation

Title of Regulation: **18VAC48-50. Common Interest Community Manager Regulations (adding 18VAC48-50-10 through 18VAC48-50-290).**

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

Public Hearing Information:

August 3, 2009 - 10 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, 2nd Floor, Board Room 1, Richmond, VA

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

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

Basis: Section 54.1-2349 states in part that the board shall have the power and duty to promulgate regulations to carry out the requirements of Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia. In addition, § 54.1-2349 A 2 states that the board shall establish criteria for the licensing

of common interest community managers and § 54.1-2349 A 6 states that the board shall establish standards of conduct for common interest community managers. Section 54.1-201 (5) states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulation is mandatory to implement Chapters 851 and 871 of the Acts of the 2008 General Assembly.

Purpose: The new regulation establishes qualifications and standards of practice and conduct for common interest community managers. The new regulation is necessary to implement Chapters 851 and 871 of the Acts of the 2008 General Assembly, which were the result of HB 516 and SB 301. The goal of the regulation is to establish qualifications and standards of practice and conduct for common interest community managers in accordance with HB 516 and SB 301. The General Assembly determined that regulatory oversight of common interest community managers is essential to protect the health, safety, and welfare of the citizens of Virginia. Minimum qualifications for common interest community managers, annual assessment filing requirements, provisional licensure, and the standards of conduct and practice are the general items that will be addressed in the regulations.

Substance: The regulation clarifies requirements found in Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia. The regulation is new in its entirety; therefore, there are no changes to previously existing sections. The regulation defines terms used throughout the regulations; states the application procedures; provides qualifications for licensure of common interest community managers, including bond and insurance requirements, past conviction and financial information submission requirements, and experiential and professional qualifications; lists all fees, including initial application fees, renewal fees, and reinstatement fees; includes annual assessment requirements; establishes standards and requirements for renewal and/or reinstatement of license, including requirement for reinstatement, status of license during reinstatement periods, and the board's discretion regarding denial of licenses; outlines grounds for disciplinary action, license maintenance requirements, client account maintenance and management requirements, requirements for changing a business entity, and notification of the board of adverse actions and prohibited acts; establishes a code of conduct and internal accounting controls in accordance with § 54.1-2346 E of the Code of Virginia; and provides requirements to be approved as a training provider, program curriculum, recordkeeping provisions, reporting, provisions for withdrawal of approval, and examination provisions.

Issues: The primary advantage to the public is that common interest community managers will be regulated to ensure that the health, safety, and welfare of the public, particularly those residing in common interest communities, is protected. The only foreseeable disadvantage is that the increased costs from managers and associations will likely be passed along to association members (i.e., homeowners, unit owners, etc.). The primary advantage to the Commonwealth is that the regulation of common interest community managers reflects the importance that Virginia places on ensuring that those providing management services to associations and their members have met specific minimum requirements for licensure and must maintain certain standards of practice and conduct in order to provide those services.

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

Summary of the Proposed Amendments to Regulation. Pursuant to § 54.1-2348, the Common Interest Community Board (Board) proposes to promulgate regulations to govern the licensure of common interest community managers. With this regulatory action, the Board proposes to set:

- licensure requirements,
- licensure fees,
- renewal and reinstatement requirements,
- standards of conduct and
- criteria for Board approved training programs and testing.

These proposed regulations will replace emergency regulations that will expire November 12, 2009.

Result of Analysis. There is insufficient information to decide if benefits outweigh costs for these proposed regulations.

Estimated Economic Impact. Until legislation mandated it in 2008, common interest community (CIC) managers were not required to be licensed. The Board has already promulgated emergency regulations to license managers and has, as directed by legislation, issued provisional licenses to all eligible CIC managers. According to Chapter 851 of the 2008 Act of the Assembly, "any person, partnership, corporation, or other entity offering management services to a common interest community on or before December 31, 2008, who makes application for licensure prior to January 1, 2009" is eligible to receive a provisional license which will expire on June 30, 2011. Thereafter, these entities will be subject to the renewal ($100 application fee) and/or reinstatement ($300 application fee) mandates in these proposed regulations. Entities who do not meet the criteria for provisional licensure will be licensed under the provisions for initial licensure ($100 application fee + $25 recovery fund fee).

In order to qualify for initial licensure as a CIC manager, a firm (as defined in the proposed regulations) must:

1. disclose all pertinent identifying information (names under which the firm conducts business, mailing address, physical address, etc.),

2. disclose any felony convictions or pleas of nolo contendere as well as any misdemeanor convictions within the three years immediately preceding application for licensure for the firm, its responsible person and any principals of the firm,

3. submit evidence of a blanket fidelity bond or employee dishonesty insurance policy (in the amounts mandated under § 54.1-2346 (D) of the Code of Virginia),

4. adhere to the standards of conduct in these proposed regulations,

5. be in good standing with any Virginia or other state regulatory entity by which the firm has ever been licensed, certified or registered,

6. designate on individual who will be the "responsible person" for the firm who will be responsible for the firm's compliance with applicable laws and regulations and who will receive any correspondences from the Board, and

7. either hold active certification as an Accredited Association Management Company (AAMC) through the Community Associations Institute (CAI) or meet alternate Board approved criteria.

In order to obtain AAMC certification, a firm must have 1) at least three employees, 2) at least three years of experience providing management services, 3) a senior manager with certification as a Professional Community Association Manager (PCAM) and 4) have a staff of which at least 50% of employees hold some sort of professional manager certification as a Certified Manager of Community Associations (CMCA), a Association Management Specialist (AMS) or a PCAM. In order to gain certification as a CMCA, an individual has to complete approximately 16 hours of training (cost between $345 and $495[1] and pass a test ($300 fee) given through the National Board of Certification for Community Association Managers (NBCCAM). Individuals with CMCA certification can also gain AMS certification by taking an additional training course (cost approximately $400) and pay an application fee of $250. Individuals applying for AMS certification must have at least two years of managerial experience. Individuals who have AMS certification can gain PCAM certification by completing five additional training sessions costing roughly $400 each (a total of approximately $2,000) and paying a $295 application fee. Individuals applying for PCAM certification must have at least five years of management experience. AMS and PCAM certified individuals must reapply for certification every three years and PCAM certified individuals must pay an annual maintenance fee of $175.

The Board has an approved alternate path to licensure in these proposed regulations that requires approximately the same training as do the CAI certifications. Firms may be licensed if there is at least one supervisory employee or company officer with five years of experience in providing management services and that employee has completed an approved comprehensive training program which includes at least 80 contact hours of instruction. Additionally, at least 50% of employees with principal responsibility for management services must either:

1. hold PCAM certification and certify that they have provided managerial services in the 12 months immediately preceding application for licensure,

2. hold CMCA certification and certify that they have provided managerial services for at least two years, twelve months of which was provided in the year immediately preceding application for licensure,

3. hold AMS certification and certify that they have provided managerial services for at least two years, twelve months of which was provided in the year immediately preceding application for licensure, or

4. complete a Board approved introductory training course (16 hours), pass a Board approved certifying exam and have provided managerial services for at least two years, twelve months of which was provided in the year immediately preceding application for licensure.

The Board has not yet approved any training programs so the cost of training for individuals who choose this alternate route to licensure is not known. If Board approved training proves to be more costly than CAI training, it will likely not be greatly utilized. The fee for initial training program approval is $100 and the fee for a training provider to add a program is $50.

In addition to all other fees, CIC managers must submit a statutorily required annual assessment of not more than $1,000. The Department of Professional and Occupational Regulation (DPOR) reports that the average assessment charge thus far is about $95.

CIC managers that are subject to these proposed regulations will incur the fees listed above as well as opportunity costs for time spent meeting new licensure requirements (time spent in training rather than working or engaging in some other activity, time spent studying for and taking exams, etc). In total, costs for licensure have the potential to be substantial and will likely serve as a barrier to entry for potential new management firms. These costs must be weighed against possible decreases in losses that common interest communities might suffer on account of dishonest or incompetent management. Any benefit from requiring licensure is likely at least partially duplicative of, and mitigated by, the benefits of requiring fidelity bonds or insurance. There is insufficient information to accurately

gauge whether the benefits of requiring licensure in this instance outweigh its costs.

Businesses and Entities Affected. The DPOR reports that there are currently approximately 200 licensed common interest community managers and approximately 4,000 registered CIC associations. Most, if not all, of these entities meet the definition of small businesses.

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

Projected Impact on Employment. The number of individuals employed as CIC managers may decrease on account of these proposed regulations. Employment in Board approved CIC training programs will likely increase. There is insufficient information to gauge what the effect on total employment in the Commonwealth will be.

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

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth will likely incur fees associated with licensure and training as well as opportunity costs for time spent meeting the training requirements of these proposed regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The statute that mandates licensure for CIC managers seems to allow the Board an option to create a path to licensure that would only require passing a (now non-existent) examination. If the Board is able to create an acceptable exam that could serve as an alternate path to licensure, the costs for regulated entities might be decreased.

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.

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[1] All fees assume that individuals do not have CAI membership. Fees are lower for members.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis. Concur with the approval.

Summary:

This is a new regulation that establishes the licensure requirements for common interest community managers, as well as the standards of practice and conduct for common interest community managers and requirements for training programs. The regulation will ultimately replace emergency regulations that were implemented as a result of the enactment of Chapters 851 and 871 of the Acts of the 2008 General Assembly, which were the result of HB 516 and SB 301. These Acts required regulations to be effective within 280 days of enactment, thus the implementation of emergency regulations on November 13, 2008.

CHAPTER 50
COMMON INTEREST COMMUNITY MANAGER REGULATIONS

Part I
General

18VAC48-50-10. Definitions.

Section 54.1-2345 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Association"

"Board"

"Common interest community"

"Common interest community manager"

"Declaration"

"Governing board"

"Lot"

"Management services"

The following words, terms, and phrases when used in this chapter shall have the following meaning unless the context clearly indicates otherwise.

"Address of record" means the mailing address designated by the regulant to receive notices and correspondence from the board. Notice mailed to the address of record by certified mail, return receipt requested, shall be deemed valid notice.

"Applicant" means a common interest community manager that has submitted an application for licensure.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Contact hour" means 50 minutes of instruction.

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

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia and properly registered, as may be required, with the Virginia State Corporation Commission.

"Full-time employee" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed common interest community manager.

"Gross receipts" means all revenue derived from providing management services to common interest communities in the Commonwealth of Virginia, excluding pass-through expenses or reimbursement of expenditures by the regulant on behalf of an association.

"Regulant" means a common interest community manager as defined in § 54.1-2345 of the Code of Virginia who holds a license issued by the board.

"Reinstatement" means the process and requirements through which an expired license can be made valid without the regulant having to apply as a new applicant.

"Renewal" means the process and requirements for periodically approving the continuance of a license for another period of time.

"Responsible person" means the employee, officer, manager, owner, or principal of the firm who shall be designated by each firm to ensure compliance with Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, and all regulations of the board, and to receive communications and notices from the board that may affect the firm. In the case of a sole proprietorship, the sole proprietor shall have the responsibilities of the responsible person.

"Sole proprietor" means any individual, not a corporation or other registered business entity, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

Part II
Entry

18VAC48-50-20. Application procedures.

All applicants seeking licensure shall submit an application with the appropriate fee specified in 18VAC48-50-60. Application shall be made on forms provided by the department.

By submitting the application to the department, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations.

The receipt of an application and the deposit of fees by the board does not indicate approval by the board.

The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained herein and on the application. Applications will not be considered complete until all required documents are received by the board.

A firm will be notified within 30 days of the board's receipt of an initial application if the application is incomplete. Firms that fail to complete the process within 12 months of receipt of the application in the board's office must submit a new application and fee.

18VAC48-50-30. Qualifications for licensure.

A. Firms that provide common interest community management services shall submit an application on a form prescribed by the board and shall meet the requirements set forth in § 54.1-2346 of the Code of Virginia, as well as the additional qualifications of this section.

B. Any firm offering management services as defined in § 54.1-2345 of the Code of Virginia shall hold a license as a common interest community manager. All names under which the common interest community manager conducts business shall be disclosed on the application. The name under which the firm conducts business and holds itself out to the public (i.e., the trade or fictitious name) shall also be disclosed on the application. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of court in the county or jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

C. The applicant shall disclose the firm's mailing address, the firm's physical address, and the address of the office from

which the firm provides management services to Virginia common interest communities. A post office box is only acceptable as a mailing address when a physical address is also provided.

D. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, the responsible person, and any of the principals of the firm:

1. All felony convictions.

2. All misdemeanor convictions, in any jurisdiction, within three years of the date of application.

3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

E. The applicant shall submit evidence of a blanket fidelity bond or employee dishonesty insurance policy in accordance with § 54.1-2346 D of the Code of Virginia. Proof of current bond or insurance policy must be submitted in order to obtain or renew the license. The bond or insurance policy must be in force no later than the effective date of the license and shall remain in effect through the date of expiration of the license.

F. The applicant shall be in compliance with the standards of conduct and practice set forth in Part V (18VAC48-50-140 et. seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the license is in effect.

G. The applicant, the responsible person, and any principals of the firm shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered and the board, in its discretion, may deny licensure to any applicant who has been subject to, or whose principals have been subject to, or any firm in which the applicant's principals hold a 10% or greater interest have been subject to, any form of adverse disciplinary action, including but not limited to, reprimand, revocation, suspension or denial, imposition of a monetary penalty, required to complete remedial education, or any other corrective action, in any jurisdiction or by any board or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to applying for licensure in Virginia.

H. The applicant shall provide all relevant information about the firm, the responsible person, and any of the principals of the firm for the seven years prior to application on any outstanding judgments, past-due tax assessments, defaults on bonds, or pending or past bankruptcies, and specifically shall provide all relevant financial information related to providing management services as defined in § 54.1-2345 of the Code of Virginia. The applicant shall further disclose whether or not one or more of the principals who individually or collectively own more than a 50% equity interest in the firm are or were equity owners holding, individually or collectively, a 10% or greater interest in any other entity licensed by any agency of the Commonwealth of Virginia that was the subject of any adverse disciplinary action, including revocation of a license, within the seven-year period immediately preceding the date of application.

I. Applicants for licensure shall hold an active designation as an Accredited Association Management Company by the Community Associations Institute.

J. In lieu of the provisions of subsection I of this section, an applicant may be licensed provided the applicant certifies to the board that the applicant has (i) at least one supervisory employee or officer with five years of experience in providing management services and who has successfully completed a comprehensive training program as described in 18VAC48-50-250 B, as approved by the board, involved in all aspects of the management services offered and provided by the firm and (ii) at least 50% of persons who have principal responsibility for management services meet one of the following:

1. Hold an active designation as a Professional Community Association Manager and certify having provided management services for a period of 12 months immediately preceding application;

2. Hold an active designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers and certify having two years of experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application;

3. Hold an active designation as an Association Management Specialist and certify having two years of experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application; or

4. Have completed an introductory training program, as set forth in 18VAC48-50-250 A, and certifying examination approved by the board and certify having two years experience in providing management services. Of the required two years experience, a minimum of 12 months of experience must have been gained immediately preceding application.

K. The firm shall designate a responsible person.

18VAC48-50-40. Application denial.

The board may refuse initial licensure due to an applicant's failure to comply with entry requirements or for any of the reasons for which the board may discipline a regulant. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia. The denial is considered to be a case decision and is subject to appeal under Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

Part III
Fees

18VAC48-50-50. General fee requirements.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee is on time. Checks or money orders shall be made payable to the Treasurer of Virginia.

18VAC48-50-60. Fee schedule.

Fee Type	Fee Amount		Recovery Fund Fee* (if applicable)	Total Amount Due (excluding annual assessment in 18VAC48-50-80)	When Due
Initial Common Interest Community Manager Application	$100	+	25	$125	With initial application filed on or after January 1, 2009
Common Interest Community Manager Renewal	$100			$100	With renewal application
Common Interest Community Manager Reinstatement (includes a $200 reinstatement fee in addition to the regular $100 renewal fee)	$300			$300	With renewal application
Training Program Provider Initial Application	$100			$100	With application
Training Program Provider Add Program	$50			$50	With application

*In accordance with § 55-530.1 of the Code of Virginia.

18VAC48-50-70. Annual assessment.

In addition to the fees listed in 18VAC48-50-60, each common interest community manager must submit an annual assessment in accordance with § 54.1-2349 A 1 of the Code of Virginia. The annual assessment shall be submitted with the initial application and with each renewal application. When the annual assessment due is less than $1,000, the common interest community manager shall submit documentation of gross receipts for the preceding calendar year with each annual assessment in order to verify the annual assessment amount due. Documentation of gross receipts is not required from common interest community managers that submit the maximum annual assessment amount of $1,000. Acceptable documentation may include, but is not limited to, audits, tax returns, or financial statements.

18VAC48-50-80. Provisional licenses.

Provisional licenses will be subject to the annual assessment for each year that the provisional license is in effect. When the annual assessment due is less than $1,000, the common interest community manager shall submit documentation of gross receipts for the preceding calendar year with each annual assessment in order to verify the annual assessment amount due. Documentation of gross receipts is not required from common interest community managers that submit the maximum annual assessment amount of $1,000. Acceptable documentation may include, but is not limited to, audits, tax returns, or financial statements.

Provisional licensees must submit annual proof of current bond or insurance policy in accordance with 18VAC48-50-30 D, and are also subject to the provisions of 18VAC48-50-150 D. Failure to submit the annual assessment and proof of current bond or insurance policy within 30 days of the request

by the board shall result in the automatic suspension of the license.

Part IV
Renewal and Reinstatement

18VAC48-50-90. Renewal required.

A license issued under this chapter shall expire one year from the last day of the month in which it was issued. A fee shall be required for renewal. In accordance with § 54.1-2346 F of the Code of Virginia, provisional licenses shall expire on June 30, 2011, and shall not be renewed.

18VAC48-50-100. Expiration and renewal.

A. Prior to the expiration date shown on the license, licenses shall be renewed upon completion of the renewal application, submittal of proof of current bond or insurance policy as detailed in 18VAC48-50-30 D, and payment of the fees specified in 18VAC48-50-60 and 18VAC48-50-70. The board will mail a renewal notice to the regulant at the last known mailing address of record. Failure to receive this notice shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a copy of the license may be submitted with the required fees as an application for renewal. By submitting an application for renewal, the regulant is certifying continued compliance with the Standards of Conduct and Practice in Part V (18VAC48-50-140 et seq.) of this chapter.

B. Applicants for renewal shall continue to meet all of the qualifications for licensure set forth in 18VAC48-50-30.

18VAC48-50-110. Reinstatement required.

A. If the requirements for renewal of a license, including receipt of the fees by the board and submittal of proof of current bond or insurance policy as detailed in 18VAC48-50-30 D, are not completed within 30 days of the license expiration date, the regulant shall be required to reinstate the license by meeting all renewal requirements and by paying the reinstatement fee specified in 18VAC48-50-60.

B. A license may be reinstated for up to six months following the expiration date. After six months, the license may not be reinstated under any circumstances and the regulant must meet all current entry requirements and apply as a new applicant.

C. Any regulated activity conducted subsequent to the license expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

18VAC48-50-120. Status of license during the period prior to reinstatement.

A regulant who applies for reinstatement of a license shall be subject to all laws and regulations as if the regulant had been continuously licensed. The regulant shall remain under and be subject to the disciplinary authority of the board during this entire period.

18VAC48-50-130. Board discretion to deny renewal or reinstatement.

The board may deny renewal or reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a current regulant.

The board may deny renewal or reinstatement of a license if the regulant has been subject to a disciplinary proceeding and has not met the terms of an agreement for licensure, has not satisfied all sanctions, or has not fully paid any monetary penalties and costs imposed by the board.

Part V
Standards of Conduct and Practice

18VAC48-50-140. Grounds for disciplinary action.

The board may place a regulant on probation, impose a monetary penalty in accordance with § 54.1-2351 H of the Code of Virginia, or revoke, suspend or refuse to renew any license when the regulant has been found to have violated or cooperated with others in violating any provisions of the regulations of the board or Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia.

18VAC48-50-150. Maintenance of license.

A. No license issued by the board shall be assigned or otherwise transferred.

B. A regulant shall report, in writing, all changes of address to the board within 30 days of the change and shall return the license to the board. In addition to the address of record, a physical address is required for each license. If the regulant holds more than one license, certificate, or registration, the regulant shall inform the board of all licenses, certificates, and registrations affected by the address change.

C. Any change in any of the qualifications for licensure found in 18VAC48-50-30 shall be reported to the board within 30 days of the change.

D. Notwithstanding the provisions of subsection C of this section, a regulant shall report the cancellation, amendment, expiration, or any other change of any bond or insurance policy submitted in accordance with 18VAC48-50-30 D within five days of the change.

18VAC48-50-160. Maintenance and management of accounts.

Regulants shall maintain all funds from associations in accordance with § 54.1-2353 A of the Code of Virginia. Funds that belong to others that are held as a result of the fiduciary relationship shall be labeled as such to clearly distinguish funds that belong to others from those funds of the common interest community manager.

18VAC48-50-170. Change of business entity requires a new license.

A. Licenses are issued to firms as defined in this chapter and are not transferable. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the license becomes void and shall be returned to the board within 30 days of the change. Such changes include but are not limited to:

1. Cessation of the business or the voluntary termination of a sole proprietorship or general partnership;

2. Death of a sole proprietor;

3. Formation, reformation, or dissolution of a general partnership, limited partnership, corporation, limited liability company, association, or any other business entity recognized under the laws of the Commonwealth of Virginia; or

4. The suspension or termination of the corporation's existence by the State Corporation Commission.

B. When a new firm is formed, the new firm shall apply for a new license on a form provided by the board before engaging in any activity regulated by Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.

18VAC48-50-180. Notice of adverse action.

A. Regulants shall notify the board of the following actions:

1. Any disciplinary action taken by another jurisdiction, board, or administrative body of competent jurisdiction, including but not limited to any reprimand, license revocation, suspension or denial, monetary penalty, or requirement for remedial education or other corrective action.

2. Any voluntary surrendering of a license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, of any felony or of any misdemeanor in any jurisdiction. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

B. The notice must be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

18VAC48-50-190. Prohibited acts.

A. The following acts are prohibited and any violation may result in disciplinary action by the board:

1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any of the regulations of the board or Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia, Chapter 24 (§ 55-424 et seq.) of Title 55 of the Code of Virginia, Chapter 26 (§ 55-508 et seq.) of Title 55 of the Code of Virginia, or Chapter 29 (§ 55-528 et seq.) of Title 55 of the Code of Virginia, or engaging in any acts enumerated in §§ 54.1-102 and 54.1-111 of the Code of Virginia.

2. Allowing the common interest community manager license to be used by another.

3. Obtaining or attempting to obtain a license by false or fraudulent representation, or maintaining, renewing, or reinstating a license by false or fraudulent representation.

4. A regulant having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180.

5. Failing to inform the board in writing within 30 days that the regulant was convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180.

6. Failing to report a change as required by 18VAC48-50-150 or 18VAC48-50-170.

7. The intentional and unjustified failure to comply with the terms of the contract, operating agreement, or governing documents.

8. Engaging in dishonest or fraudulent conduct in providing management services.

9. Failing to satisfy any judgments or restitution orders entered by a court or arbiter of competent jurisdiction.

10. Incompetence in providing management services.

11. Failing to handle association funds in accordance with the provisions of § 54.1-2353 A of the Code of Virginia or 18VAC48-50-160.

12. Failing to account in a timely manner for all money and property received by the regulant in which the association has or may have an interest.

13. Failing to disclose to the association material facts related to the association's property or concerning management services of which the regulant has actual knowledge.

14. Failing to provide complete records related to the association's management services to the association

within 30 days of any written request by the association or within 30 days of the termination of the contract unless otherwise agreed to in writing by both the association and the common interest community manager.

15. Failing upon written request of the association to provide books and records such that the association can perform pursuant to §§ 55-510 (Property Owners Association Act), 55-79.74:1 (Condominium Act), and 55-474 (Virginia Real Estate Cooperative Act) of the Code of Virginia.

16. Commingling the funds of any association by a principal, his employees, or his associates with the principal's own funds or those of his firm.

17. Failing to act in providing management services in a manner that safeguards the interests of the public.

18. Failing to make use of a legible, written contract clearly specifying the terms and conditions of the management services to be performed by the common interest community manager. The contract shall include, but not be limited to, the following:

a. Beginning and ending dates of the contract;

b. Cancellation rights of the parties;

c. Record retention and distribution policy;

d. A general description of the records to be kept and the bookkeeping system to be used; and

e. The common interest community manager's license number.

B. Prior to commencement of the terms of the contract or acceptance of payments, the contract shall be signed by the regulant and the client or the client's authorized agent.

18VAC48-50-200. Establishment of code of conduct.

The firm shall establish and distribute to the firm's employees, principals, and agents a written code of conduct to address business practices including the appropriateness of giving and accepting gifts, bonuses, or other remuneration to and from common interest communities or providers of services to common interest communities. In accordance with clause (ii) of § 54.1-2346 E of the Code of Virginia, the code of conduct for officers, directors, and employees shall also address disclosure of relationships with other firms that provide services to common interest communities and that may give rise to a conflict of interest.

18VAC48-50-210. Establishment of internal accounting controls.

The firm shall establish written internal accounting controls to provide adequate checks and balances over the financial activities and to manage the risk of fraud and illegal acts. The internal accounting controls shall be in accordance with generally accepted accounting practices.

18VAC48-50-220. Response to inquiry and provision of records.

A. A regulant must respond within 10 days to the board or any of its agents regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a regulant of the board shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any transaction in which the regulant was involved, or for which the regulant is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A regulant shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsections A and B of this section, a regulant must respond to an inquiry by the board or its agent within 21 days.

Part VI
Training Programs and Examination

18VAC48-50-230. Training programs generally.

All training programs must be approved by the board. Any or all of the training programs can be met using distance or online education technology. Training programs may be approved retroactively; however, no regulant will receive credit for the training program until such approval is granted by the board.

18VAC48-50-240. Approval of common interest community manager training programs.

Each provider of a training program shall submit an application for program approval on a form provided by the board. In addition to the appropriate fee provided in 18VAC48-50-60, the application shall include but is not limited to:

1. The name of the provider;

2. Provider contact person, address, and telephone number;

3. Program contact hours;

4. Schedule of training program, if established, including dates, times, and locations;

5. Instructor information, including name, license numbers, if applicable, and a list of other trade-appropriate designations, as well as a professional resume with a summary of acceptable teaching experience and subject-matter knowledge and qualifications;

6. A summary of qualifications and experience in providing training for common interest communities;

7. Training program and material fees; and

8. Training program syllabus.

18VAC48-50-250. Training program requirements.

A. In order to qualify as an introductory training program under 18VAC48-50-30 J 4, the introductory training program must include a minimum of 16 contact hours and the syllabus shall encompass all of the subject areas set forth in subsection C of this section.

B. In order to qualify as a comprehensive training program under 18VAC48-50-30 J 1, the comprehensive training program must include a minimum of 80 contact hours and the syllabus shall include at least 40 contact hours encompassing all of the subject areas set forth in subsection C of this section and may also include up to 40 contact hours in other subject areas approved by the board.

C. The following subject areas as they relate to common interest communities and associations shall be included in each training program.

1. Governance, legal matters, and communications;

2. Financial matters, including budgets, reserves, investments, and assessments;

3. Contracting;

4. Risk management and insurance;

5. Management ethics for common interest community managers;

6. Facilities maintenance; and

7. Human resources.

D. All training programs are required to have a final, written examination.

18VAC48-50-260. Maintenance of records.

All providers must establish and maintain a record for each student. The record shall include the student's name and address, social security number or control number issued by the Department of Motor Vehicles, the training program name and hours attended, the training program syllabus or outline, the name or names of the instructors, the date of successful completion, and the board's approved training program code. Records shall be available for inspection during normal business hours by authorized representatives of the board. Providers must maintain these records for a minimum of five years.

18VAC48-50-270. Reporting of changes.

Any change in the information provided in 18VAC48-50-240 must be reported to the board within 30 days of the change with the exception of changes in the schedule of training program offerings, which must be reported within 10 days of the change. Failure to report the changes as required may result in the withdrawal of approval of a training program by the board.

18VAC48-50-280. Withdrawal of approval.

The board may withdraw approval of any training program for the following reasons:

1. The training program being offered no longer meets the standards established by the board.

2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way.

3. The provider, instructor, or designee of the provider falsifies any information relating to the application for approval, training program information, or student records or fails to produce records required by 18VAC48-50-260.

4. A change in the information provided in 18VAC48-50-240, except for subdivision 4 of 18VAC48-50-240.

18VAC48-50-290. Examinations.

All examinations required for licensure shall be approved by the board and provided by the board or a testing service acting on behalf of the board, or another governmental agency or organization.

VA.R. Doc. No. R09-1641; Filed June 2, 2009, 2:10 p.m.

BOARD OF NURSING

Final Regulation

REGISTRAR'S NOTICE: The Board of Nursing is claiming an exemption from the Administrative Process Act in accordance § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Nursing will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-36).**

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

Effective Date: July 22, 2009.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

The amendments conform the regulation with Chapter 382 of the 2009 Acts of Assembly, which amended § 54.1-3012.1 of the Code of Virginia by specifying the criteria

for collection of workforce data by the Board of Nursing and the limitation of the release of such data. Chapter 382 requires that the collection of information on nurses be consistent with provisions of § 54.1-2506.1, which sets out the authorization of the Department of Health Professions to collect data on individuals licensed, certified, or registered by a health regulatory board.

Currently, information obtained through workforce data collection cannot be released in any form or manner that could identify individual nurses. Chapter 382 allows release of information that does identify individuals, for the purpose of determining shortage designations, to certain qualified personnel, if pertinent to research or a study. There must be a written agreement that the identities will not be further divulged.

18VAC90-20-36. Data collection of nursing workforce information.

A. With such funds as are appropriated for the purpose of data collection and consistent with the provisions of § 54.1-2506.1 of the Code of Virginia, the board shall collect workforce information biennially from a representative sample of registered nurses, licensed practical nurses, and certified nurse aides and shall make such information available to the public. Data collected shall be compiled, stored, and released ~~only in the aggregate and shall not provide information which would identify individual responders~~ in compliance with § 54.1-3012.1 of the Code of Virginia.

B. The information to be collected on nurses shall include, but not be limited to: (i) demographic data to include age, sex and ethnicity; (ii) level of education; (iii) employment status; (iv) employment setting or settings such as in a hospital, physician's office, or nursing home; (v) geographic location of employment; (vi) type of nursing position or area of specialty; and (vii) number of hours worked per week in each setting. In addition, the board may determine other data to be collected as necessary.

VA.R. Doc. No. R09-1864; Filed June 3, 2009, 10:03 a.m.

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TITLE 22. SOCIAL SERVICES

DEPARTMENT OF REHABILITATIVE SERVICES

Final Regulation

Title of Regulation: **22VAC30-40. Protection of Participants in Human Research (amending 22VAC30-40-10 through 22VAC30-40-150; adding 22VAC30-40-160).**

Statutory Authority: § 51.5-5.1 of the Code of Virginia.

Effective Date: July 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.

Summary:

These regulations provide a basis for the Department of Rehabilitative Services (DRS) to oversee human subjects research involving the Department of Rehabilitative Services, the Woodrow Wilson Rehabilitation Center, sheltered workshops, and independent living centers. The amendments: (i) make minor changes in language to ensure consistency with 45 CFR 46.101 et seq.; (ii) change the definition of sheltered workshop so that only those vocational rehabilitation service programs that have a vendor relationship with the department and are not operated by a community services board are covered by this regulation; (iii) provide that independent living centers and sheltered workshops no longer have the option to establish their own human research review committee or to affiliate with other centers or workshops to establish a central human research committee but are required to affiliate with the DRS human research review committee; (iv) change the procedures for obtaining the informed written consent of prospective research subjects to ensure consistency with the requirements of federal regulations; (v) change the composition of the human research review committee that reviews research proposals to determine if they meet the requirements of this regulation to ensure consistency with federal requirements; (vi) add a new section that governs the inclusion of minors as research subjects; and (vii) change procedures for expedited review and the description of research that may receive expedited review to reflect existing federal regulations.

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

22VAC30-40-10. Definitions.

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

"Affiliated with the ~~institution~~ covered entity" means employed by the ~~institution~~ covered entity or a member of a household containing an employee of the ~~institution~~ covered entity.

"Agent" means any individual performing department-designated activities or exercising department-delegated authority or responsibility.

"Assent" means a child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

"Commissioner" means the Commissioner of the Department of Rehabilitative Services.

"Covered entity" means the Department of Rehabilitative Services, Woodrow Wilson Rehabilitation Center, sheltered workshops, or independent living centers.

"Department" means the Department of Rehabilitative Services.

"Guardian" means an individual who is authorized under applicable state or local law to consent on behalf of a minor to general medical care.

"Human Research Review Committee" or "HRRC" means the committee established in accordance with and for the purposes expressed in this chapter.

"HRRC approval" means the determination of the HRRC that the research has been reviewed and may be conducted within the constraints set forth by the HRRC and by other department, state and federal requirements.

"Human participant or human subject" means a living individual about whom an investigator (whether professional or student) conducting research obtains:

~~(i) data~~ 1. Data through intervention or interaction with the individual; or

~~(ii) identifiable~~ 2. Identifiable private information.

~~"Human research" means any systematic investigation which utilizes human participants who may be exposed to physical or psychological injury as a consequence of participation and which departs from the application of established and accepted therapeutic methods appropriate to meet the participant's needs.~~

"Human subject research" means a systematic investigation, experiment, study, evaluation, demonstration or survey designed to develop or contribute to general knowledge (basic research) or specific knowledge (applied research) in which a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual or obtains identifiable private information.

"Identifiable private information" means information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that the individual can reasonably expect will not be made public (for example, a medical record, social security number). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) to constitute research involving human subjects.

"Independent living center" means a consumer-controlled, community-based, cross disability, nonresidential private nonprofit agency that:

1. Is designed and operated within a local community by individuals with disabilities; and

2. Provides an array of independent living services.

"Informed consent" means a process by which the investigator fully explains the research activities, ensures that the prospective subject has sufficient opportunity to ask questions, and has sufficient time to make a decision whether or not to participate in the research prior to signing the HRRC-approved written consent document. Informed consent must be prospectively obtained without coercion, include all of the basic elements of informed consent as specified in 22VAC30-40-100 B, be legally effective, contain no exculpatory language, and as required, include the additional elements of informed consent specified in 22VAC30-40-100 C.

"Institution" means ~~the department, any center of independent living, sheltered workshop, the Woodrow Wilson Rehabilitation Center, or any facility or program operated, funded, or licensed by the department~~ any public or private entity or agency (including federal, state, and other agencies).

"Interaction" ~~includes~~ means communication or interpersonal contact between investigator and ~~participant~~ subject.

"Intervention" ~~includes~~ means both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the ~~participant~~ subject or ~~participant's~~ subject's environment that are performed for research purposes.

"Investigator" means the person, whether professional or student, who conducts the research.

"Legally authorized representative," as defined in § 32.1-162.16 of the Code of Virginia, means ~~the~~, in the following specified order of priority:

1. The parent or parents having custody of a prospective ~~participant, the~~ subject who is a minor;

2. The agent appointed under an advance directive, as defined in § 54.1-2982 of the Code of Virginia, executed by the prospective subject, provided the advance directive authorizes the agent to make decisions regarding the prospective subject's participation in human research;

3. The legal guardian of a prospective ~~participant,~~ subject;

4. The spouse of the prospective subject, except where a suit for divorce has been filed and the divorce decree is not yet final;

5. An adult child of the prospective subject;

6. A parent of the prospective subject when the subject is an adult;

7. An adult brother or sister of the prospective subject; or

~~any~~ 8. Any person or judicial or other body authorized by law or regulation to consent on behalf of a prospective ~~participant~~ subject to such ~~person's~~ subject's participation in the particular human research.

For the purposes of this definition, any person authorized by law or regulation to consent on behalf of a prospective ~~participant~~ subject to ~~his~~ such subject's participation in the particular human research shall include an attorney-in-fact appointed under a durable power of attorney, to the extent the power grants the authority to make such a decision. The attorney-in-fact shall not be employed by the person, institution or agency conducting the human research ~~and shall not be authorized to consent to nontherapeutic medical research~~. No official or employee of the institution or agency conducting or authorizing the research shall be qualified to act as a legally authorized representative.

"Minimal risk" means that the ~~risks of harm anticipated in the proposed research are not greater, considering~~ probability and magnitude~~,~~ of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

"Minor," as defined in § 1-207 of the Code of Virginia, means an individual who is less than 18 years of age.

"Nontherapeutic research" means human subject research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the ~~participant~~ subject.

"Parent" means a minor's biological or adoptive parent.

"Permission" means the agreement of parent(s) or a legally authorized representative to the participation of their minor or ward in research.

"Private information" ~~includes~~ means information about ~~the human participant's~~ behavior that occurs ~~when~~ in a context in which an individual can reasonably expect that no observation or recording is taking place, ~~and~~ or information ~~which~~ that has been provided for specific purposes by ~~the human participant which~~ an individual and that the ~~participant~~ individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the human participant is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human participants.

"Research" means a systematic investigation~~, including research development, testing, and evaluation,~~ designed to develop or contribute to ~~general~~ generalizable knowledge (basic research) or specific knowledge (applied research). Activities ~~which~~ that meet this definition constitute research for purposes of this chapter, whether or not they are supported or funded under a program ~~which~~ that is considered research for other purposes. For example, some "demonstration" and "service" programs may include research activities.

~~"Research investigator" means the person, whether professional or student, who conducts the research.~~

"Sheltered workshop" means ~~a facility-based community rehabilitation~~ a program that (i) provides directly or facilitates the provision of one or more ~~of the following~~ vocational rehabilitation services enumerated in 34 CFR 361.5(b)(9)(i) to individuals with disabilities to enable them to maximize their opportunities for employment, including career advancement~~.~~; (ii) has a vendor relationship with the department; and (iii) is not operated by a community services board.

~~1. Medical, psychiatric, psychological, social, and vocational services that are provided under one management;~~

~~2. Testing, fitting, or training in the use of prosthetic and orthotic devices;~~

~~3. Recreational therapy;~~

~~4. Physical and occupational therapy;~~

~~5. Speech, language, and hearing therapy;~~

~~6. Psychiatric, psychological, and social services, including positive behavior management;~~

~~7. Assessment for determining eligibility and vocational rehabilitation needs;~~

~~8. Rehabilitation technology;~~

~~9. Job development, placement, and retention services;~~

~~10. Evaluation or control of specific disabilities;~~

~~11. Orientation and mobility services for individuals who are blind;~~

~~12. Extended employment;~~

~~13. Psycho-social rehabilitation services;~~

~~14. Supported employment services and extended services;~~

~~15. Services to family members when necessary to the vocational rehabilitation of the individual;~~

~~16. Personal assistance services; or~~

~~17. Services similar to the services described in subdivisions 1 through 16.~~

~~"Voluntary informed consent" means the knowing, written consent of an individual, or the individual's legally authorized representative, so situated as to be able to exercise free power~~

~~of choice without undue inducement or any element of force, fraud, deceit, duress or other form of constraint or coercion. With regard to the conduct of human research, the basic elements of information necessary to such consent shall include in writing:~~

~~1. A statement that the study involves research, and a reasonable and comprehensible explanation to the human participant of the procedures that the researcher will follow and their purposes, including identification of any procedures which are experimental; the expected duration of the human participant's participation; and a statement describing the extent, if any, to which confidentiality of records identifying the participant will be maintained, and if any data from this study are published, the individual will not be identified without his written permission;~~

~~2. A description of any attendant discomforts and risks to the human participant which may reasonably be expected and a statement that there may be other risks not yet identified;~~

~~3. A description of any benefits to the human participant or to others which may reasonably be expected;~~

~~4. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the human participant;~~

~~5. An offer to answer and answers to any inquiries by any individual concerning the procedure;~~

~~6. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the human participant is otherwise entitled, and the human participant may discontinue participation at any time without penalty or loss of benefits to which he is otherwise entitled;~~

~~7. An explanation of who to contact for answers to pertinent questions about the research and human research participants' rights, and who to contact in the event of a research related injury;~~

~~8. For research involving more than minimal risk, an explanation as to whether any compensation or medical care is available if injury occurs and, if so, what it consists of or where further information may be obtained; and~~

~~9. An explanation of any costs or compensation which may accrue to the person and, if applicable, the availability of third party reimbursement for the proposed procedures or protocols.~~

22VAC30-40-30. Applicability.

This chapter shall apply to the Department of Rehabilitative Services, Woodrow Wilson Rehabilitation Center, ~~any~~ sheltered ~~workshop or~~ workshops and independent living ~~center~~ centers, ~~and any facility operated, funded or licensed by the department which conducts or which proposes to conduct or authorize research which uses human participants~~ known as covered entities.

22VAC30-40-40. ~~Policy~~ General provisions for conducting human subjects research.

A. No human subjects research may be conducted by a covered entity without the ~~voluntary~~ informed consent of the ~~participant~~ subject or ~~his~~ the subject's legally authorized representative. The required elements of informed consent are provided in 22VAC30-40-100. The consent of the ~~participant~~ human subject or ~~his~~ the human subject's legally authorized representative to participate in the research must be documented in writing and supported by the signature of a witness not involved in the conduct of the research, except as provided for in 22VAC30-40-100 ~~F~~ J. The ~~research~~ investigator shall ~~sign~~ ensure that a knowledgeable member of the research team signs and ~~provide participants~~ provides human subjects of a research ~~study~~ project with a copy of the written, ~~voluntary~~ informed consent ~~statement~~ document as defined in ~~22VAC30-40-10~~ 22VAC30-40-100 B. The investigator shall make arrangements for those who need special assistance in understanding the consequences of participating in the research.

B. Each human subjects research ~~study~~ project shall be approved by ~~a committee composed of representatives of varied backgrounds who shall assure the competent, complete, and professional review of human research activities~~ the department's HRRC. ~~An institution may establish its own research review committee, it may work with other institutions to establish a single committee, or it may use the department's established committee.~~

C. Nontherapeutic research ~~using institutionalized participants~~ is prohibited unless the ~~research review committee~~ HRRC determines that such nontherapeutic research will not present greater than minimal risk to ~~the~~ human ~~participant~~ subjects.

D. The ~~research~~ investigator shall be required to notify all human ~~participants in research~~ subjects of the risks caused by the research ~~which~~ that are discovered after the research has concluded.

E. 22VAC30-40-160 applies to all research involving minors as subjects conducted or supported by the covered entity. In addition to other responsibilities assigned to the HRRC under 22VAC30-40-160, the HRRC shall review research covered by 22VAC30-40-160 and approve only research that satisfies the conditions of all applicable sections of this chapter. Exemptions in subdivisions 1 and 3 through 6 of 22VAC30-40-80 are applicable to 22VAC30-40-160. The exemption in subdivision 2 of 22VAC30-40-80 regarding educational tests is also applicable to 22VAC30-40-160. However, the exemption in subdivision 2 of 22VAC30-40-80 for research involving survey or interview procedures or observations of public behavior does not apply to research

covered by 22VAC30-40-160, except for research involving observation of public behavior when the investigator or investigators do not participate in the activities being observed.

F. Cooperative research projects are those projects covered by this chapter that involve a covered entity in conjunction with an institution(s). In the conduct of cooperative research projects, the covered entity and each institution are responsible for safeguarding the rights and welfare of human subjects and for complying with this chapter. With the approval of the commissioner, a covered entity participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified institutional review board (IRB), or make similar arrangements for avoiding duplication of effort.

G. In the event research is undertaken without the intention of involving human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by the HRRC, as provided in this chapter, a certification submitted by the covered entity to the commissioner, and final approval given to the proposed change by the commissioner.

H. With respect to any research project or any class of research projects, the commissioner may impose additional conditions prior to or at the time of approval when, in the judgment of the commissioner, additional conditions are necessary for the protection of human subjects.

I. In reviewing proposed research projects, the HRRC shall consider the requirements of review stated in 22VAC30-40-70.

22VAC30-40-50. Certification process.

A. ~~Institutions seeking to conduct or sponsor human research are required to submit statements to the research review committee assuring that all human research activities will be reviewed and approved by a research review committee. Institutions shall report annually~~ No later than 45 days after the end of each state fiscal year, Woodrow Wilson Rehabilitation Center, sheltered workshops and independent living centers shall send a written report to the commissioner giving assurance that ~~a committee exists and is functioning. These reports should include a list of committee members, their qualifications for service on the committee, their institutional affiliation and a copy of the minutes of committee meetings~~ either all human subjects research conducted during the fiscal year was reviewed and approved by the department's HRRC prior to implementation of that research or that no human subjects research was conducted during that state fiscal year.

B. ~~Prior to the initiation of a human research project, institutions~~ At the time that the research is approved by the HRRC, the HRRC chairperson shall ~~also~~ send to the commissioner a description of the research project to be undertaken, which shall include a statement of the criteria for inclusion of ~~a participant~~ prospective human subjects in the research project, a description of what will be done to ~~the~~ prospective human ~~participants~~ subjects, and ~~a copy of the informed consent statement~~ the type of review performed by the HRRC.

C. The commissioner may inspect the records of the ~~research committee~~ department's HRRC.

D. ~~The chairman of the research committee shall report as soon as possible to the head of the institution and to the commissioner any violation of the research protocol which led the committee to either suspend or terminate the research.~~ The HRRC shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the HRRC's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the HRRC's action and shall be reported promptly to the research investigator, the commissioner, the head(s) of other appropriate covered entities, and in the case of cooperative research, the institutional officials responsible for human subjects research.

E. Research covered by this chapter that has been approved by the HRRC may be subject to further appropriate review and approval or disapproval by officials of the covered entities. However, those officials may not approve the research if it has not been approved by the HRRC.

22VAC30-40-60. Composition of ~~research review committees~~ the HRRC.

A. ~~Each research committee~~ The HRRC shall have at least five members, appointed by the ~~head of the institution or department~~ commissioner, with varying backgrounds to ~~provide~~ promote complete and adequate review of ~~activities~~ research projects commonly conducted by ~~the institution~~ covered entities. The ~~committee~~ HRRC shall be sufficiently qualified through the ~~research~~ experience~~,~~ and expertise~~, and diversity~~ of its members, and the diversity of the members, including consideration of race, gender, and cultural background, and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of ~~participants in~~ human ~~research~~ subjects. In addition to possessing the professional competence necessary to review specific ~~activities~~ research projects, the ~~committee must~~ HRRC shall be able to ascertain the acceptability of ~~applications and proposals~~ proposed research in terms of ~~institutional~~ the department's commitments and regulations, applicable law, standards of professional conduct and practice, and community attitudes. If ~~a committee~~ the HRRC regularly reviews research that ~~has an impact on an institutionalized or other~~ involves a vulnerable category of ~~participants~~ subjects, ~~including residents of mental health or mental retardation facilities, the committee shall have in its membership one or more~~

~~individuals who are primarily concerned with the welfare of these participants and who have appropriate experience to serve in that capacity~~ such as children, pregnant women, or persons with mental disabilities, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects. Additional membership requirements may be imposed on the HRRC by 34 CFR 350.4(c) and 356.3(c) for research sponsored by the National Institute on Disability and Rehabilitation Research. When minors with disabilities or persons with mental disabilities are purposefully included as research subjects, the HRRC's membership must include at least one person who is primarily concerned with the welfare of these research subjects.

B. ~~No committee shall~~ Every nondiscriminatory effort will be made to ensure that the HRRC does not consist entirely of men or entirely of women, ~~or~~ including the department's consideration of qualified persons of both sexes, so long as no selection is made to the HRRC on the basis of gender. The HRRC may not consist entirely of members of one profession.

C. ~~Each committee~~ The HRRC shall include ~~at least one of the following~~:

1. ~~One~~ At least one member whose primary concerns are in nonscientific areas ~~(e.g., lawyers, ethicists, members of the clergy)~~;

2. ~~One~~ At least one member who is not otherwise affiliated with ~~the institution~~ any covered entity and who is not part of the immediate family of a person who is affiliated with the ~~institution~~ covered entity; and

~~3. One consumer; and~~

~~4. One~~ 3. At least one member whose primary concerns are in the scientific areas.

D. ~~No member of a committee~~ The HRRC shall not have a member participate in the ~~committee's~~ HRRC's initial or continuing review of any project in which the member ~~is directly involved or for which he has administrative approval authority~~ has a conflicting interest, except to provide information requested by the ~~committee~~ HRRC. The ~~committee~~ HRRC has responsibility for determining whether a member has a ~~conflict of~~ conflicting interest ~~with any study~~. The ~~committee~~ HRRC member shall be replaced in the case of ~~a conflict of~~ conflicting interest resulting in a decrease of the ~~committee~~ HRRC below five ~~persons~~ members.

E. ~~A committee~~ The HRRC may, at its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the ~~committee~~ HRRC. These individuals may not vote ~~with the committee~~.

F. A quorum of the ~~committee~~ HRRC shall consist of a majority of its members including at least one member whose primary concerns are in nonscientific areas. Except when exempt or expedited review procedures are used, proposed research shall be reviewed at convened meetings at which a majority of members is present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

G. The ~~committee~~ HRRC and the ~~institution~~ department shall establish procedures and rules of operation necessary to fulfill the requirements of these regulations.

22VAC30-40-70. Elements of ~~each committee's~~ the HRRC's review process.

A. ~~No human research shall be conducted or authorized by the Department of Rehabilitative Services, any independent living center, any sheltered workshop, or the Woodrow Wilson Rehabilitation Center unless the committee has reviewed and approved the proposed human research project giving consideration to:~~ The HRRC shall review and have authority to approve, require modifications in, or disapprove all research activities covered by this chapter.

~~1. The adequacy of the description of the potential benefits and risks involved and the adequacy of the methodology of the research;~~

~~2. The degree of the risk, and, if the research is nontherapeutic, whether it presents greater than minimal risk;~~

~~3. Whether the rights and welfare of the participants are adequately protected;~~

~~4. Whether the risks to the participants are outweighed by the potential benefits to them;~~

~~5. Whether the voluntary informed consent is to be obtained by methods that adequately and appropriately fulfill the requirements of these regulations and whether the written consent form is adequate and appropriate in both content and language for the particular research and for the particular participants of the research;~~

~~6. Whether the research investigators proposing to supervise or conduct the particular human research are appropriately competent and qualified;~~

~~7. Whether criteria for selection of participants are equitable, especially in research regarding the future development of mental or physical illness;~~

~~8. Whether the research conforms with such other requirements as the department may establish; and~~

~~9. Whether appropriate studies in nonhuman systems have been conducted prior to the involvement of human participants.~~

B. ~~The committee shall review, at least annually, approved projects to ensure conformity with the approved proposal.~~ The HRRC shall require that information given to prospective subjects as part of the informed consent process is in accordance with 22VAC30-40-100. The HRRC may require that information, in addition to that specifically mentioned in 22VAC30-40-100, be given to prospective subjects when, in the HRRC's judgment, the information would meaningfully add to the protection of the rights and welfare of subjects.

C. ~~Research must be approved by the committee which has jurisdiction over the participant. When cooperating institutions conduct some or all of the research involving some or all of the participants, each cooperating institution is responsible for safeguarding the rights and welfare of human participants and for complying with this chapter, except that in complying with this chapter institutions may enter into joint review, rely upon the review of another qualified committee, or make similar arrangements aimed at avoiding duplication of effort. The committee chairperson may make such arrangements with the approval of a majority of the members present at a meeting of the committee.~~ The HRRC shall require documentation of informed consent or may waive documentation in accordance with 22VAC30-40-100 J.

D. The ~~committee~~ HRRC shall consider research proposals within 45 days after submission of a complete application to the ~~committee's chairman~~ HRRC's chairperson. In order for the research to be approved, it shall receive the approval of a majority of those members present at a meeting in which a quorum exists. ~~A committee~~ The HRRC shall notify ~~research~~ investigators and the ~~institution~~ covered entity in writing of its decision to approve or disapprove the ~~proposed~~ research ~~activity~~, or of modifications required to secure ~~committee~~ HRRC approval.

E. The ~~committee~~ HRRC shall develop ~~a~~ written complaint ~~description of the procedure~~ procedures to be followed by a human ~~participant~~ subject who has a ~~complaint~~ concern(s) about a research project in which he is participating or has participated.

F. Any participant who has a complaint about a research project in which he is participating or has participated shall be referred to the chairperson of the ~~committee~~ HRRC who shall refer it to the ~~committee~~ HRRC to determine if there has been a violation of the research protocol as approved by the HRRC.

G. The committee shall require periodic reports. The frequency of such reports should reflect the nature and degree of risk of each research project.

H. If the HRRC decides to disapprove a research application, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

I. The HRRC shall conduct continuing review of research covered by this chapter at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

J. In order to approve research covered by this chapter, the HRRC shall determine that all of the following requirements are satisfied:

1. Risks to subjects are minimized:

a. By using procedures that are consistent with sound research design and that do not unnecessarily expose subjects to risk; and

b. Whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

2. Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the HRRC should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The HRRC should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

3. Selection of subjects is equitable. In making this assessment the HRRC should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, pregnant women, persons with mental disabilities, or economically or educationally disadvantaged persons.

4. Informed consent will be sought from each prospective subject or the subject's legally authorized representative in accordance with and to the extent required by 22VAC30-40-100.

5. Informed consent will be appropriately documented in accordance with and to the extent required by 22VAC30-40-100.

6. When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

7. When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

8. When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as

children, pregnant women, persons with mental disabilities, or economically or educationally disadvantaged persons, additional safeguards have been included in the project to protect the rights and welfare of these subjects.

22VAC30-40-80. Kinds of research exempt from committee review.

Research activities in which the only involvement of human participants will be in one or more of the following categories are exempt from these regulations unless the research is covered by other sections of this chapter. The HRRC shall determine whether the proposed research project satisfies at least one exemption category in this section before the research can be conducted:

1. Research conducted in established or commonly accepted educational settings, involving ~~commonly used~~ normal educational practices, such as:

a. Research on regular and special education instructional strategies; or

b. Research on the effectiveness of or the comparison among instructional techniques, curriculum or classroom management methods.

2. Research involving ~~solely~~ the use ~~and analysis of the results of standardized psychological, educational, diagnostic, aptitude, or achievement tests, if information taken from these sources is recorded in such a manner that participants cannot be reasonably identified, directly or through identifiers linked to the participants.~~ of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:

a. Information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and

b. Any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

3. ~~Research involving survey or interview procedures, unless responses are recorded in such a manner that participants can be identified, directly or through identifiers linked to the participants, and either:~~ Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under subdivision 2 of 22VAC30-40-80 if:

a. ~~The participant's responses, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to the participant's financial standing, employability, or reputation~~ The human subjects are elected or appointed public officials or candidates for public office; or

b. ~~The research deals with sensitive aspects of the participant's own behavior, such as sexual behavior, drug or alcohol use, illegal conduct, or family planning.~~ Federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

~~4. Research involving solely the observation (including observation by participants) of public behavior, unless observations are recorded in such a manner that participants can be identified, directly or through identifiers linked to the participants, and either:~~

~~a. The observations recorded about the individual, if they became known outside the research, could reasonably place the human participant at risk of criminal or civil liability or be damaging to the participant's financial standing, employability, or reputation; or~~

~~b. The research deals with sensitive aspects of the participant's own behavior, such as illegal conduct, drug use, sexual behavior, or use of alcohol.~~

~~5.~~ 4. Research involving ~~solely~~ the collection or study of existing data, documents, records, ~~or~~ pathological specimens, or diagnostic specimens, if these sources are publicly available~~,~~ or if the information ~~taken from these sources~~ is recorded by the investigator in such a manner that ~~participants~~ subjects cannot be identified, directly or through identifiers linked to the ~~participants~~ subjects.

5. Research and demonstration projects that are conducted by or subject to the approval of the commissioner, and that are designed to study, evaluate, or otherwise examine:

a. Public benefit or service programs;

b. Procedures for obtaining benefits or services under those programs;

c. Possible changes in or alternatives to those programs or procedures; or

d. Possible changes in methods or levels of payment for benefits or services under those programs.

6. Taste and food quality evaluation and consumer acceptance studies:

a. If wholesome foods without additives are consumed; or

b. If a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug

Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

22VAC30-40-90. Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

A. ~~The committee may conduct an expedited review of a human research project which involves no more than minimal risk to the participants if (i) another institution's or agency's human research review committee has reviewed and approved the project or (ii) the review involves only minor changes in previously approved research and the changes occur during the approved project period.~~ The HRRC may use the expedited review procedure for categories of research that are listed in 63 FR 60364-60367 where either or both of the following apply:

1. Some or all of the research appearing on the list and found by the reviewer(s) to involve no more than minimal risk.

2. Minor changes in previously approved research during the period (of one year or less) for which approval is authorized.

Under an expedited review procedure, the ~~committee~~ review may be carried out by the HRRC chairperson ~~and one~~ or by one or more experienced reviewers designated by the chairperson from among members of the ~~committee may carry out the review~~ HRRC. In reviewing the research, ~~the~~ reviewers may exercise all of the authorities of the ~~committee~~ HRRC except that ~~the~~ reviewers may not disapprove the research. A research ~~activity~~ proposal may be disapproved only after review ~~in accordance with the nonexpedited~~ by a convened meeting of the HRRC in which a quorum is present and in accordance with procedure set forth in 22VAC30-40-70.

B. ~~Each committee which uses~~ When an expedited review procedure is used, the HRRC shall adopt a method for keeping all members advised of research proposals which have been approved under the expedited review procedure.

C. ~~Research activities involving no more than minimal risk and in which the only involvement of human participants will be in one or more of the categories referred to in 34 CFR 97.110.~~ The commissioner may restrict, suspend, terminate, or choose not to authorize the HRRC's use of the expedited review procedure.

22VAC30-40-100. Informed consent.

A. ~~No human research may be conducted in the department, any independent living center, any sheltered workshop, or the Woodrow Wilson Rehabilitation Center or approved by the research committee in the absence of voluntary informed, written consent. If the participant is competent at the time the consent is required, then the consent must be subscribed to in writing by the participant and witnessed. If the participant is not competent at the time the consent is required, then the consent shall be subscribed to in writing by the participant's legally authorized representative and witnessed except as provided for in subsection F of this section. If the participant is a minor otherwise capable of rendering voluntary informed consent, the consent must be subscribed to in writing by both the minor and his legally authorized representative and witnessed. A research~~ Except as provided elsewhere in this chapter, no investigator may involve a human being as a subject in research covered by this chapter unless the investigator has obtained the legally effective informed consent of the prospective subject or the prospective subject's legally authorized representative in accordance with this chapter. The investigator shall seek such consent only under circumstances that provide the prospective human participant or the ~~representative~~ prospective human participant's legally authorized representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the prospective human participant or the prospective human participant's legally authorized representative shall be in language understandable to the prospective human participant or the prospective human participant's legally authorized representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the legally authorized representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the covered entity, or its agents from liability for negligence.

B. ~~No individual shall participate in research unless this requirement is met for each individual. The giving of consent by a legally authorized representative shall be subject to the provisions of subsection C of this section. No voluntary informed consent shall include any language through which the participant waives or appears to waive any of his legal rights, including any release of any individual, institution or agency or any agents thereof from liability for negligence. Notwithstanding consent by a legally authorized representative, no person shall be forced to participate in any human research. Each human participant shall be given a copy of the signed consent form required by 22VAC30-40-40 A, except as provided for in 22VAC30-40-100 F.~~ In seeking informed consent, the following basic elements shall be provided to each prospective subject or legally authorized representative:

1. A statement that the project involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures that are experimental;

2. A description of any reasonably foreseeable risks or discomforts to the subject;

3. A description of any benefits to the subject or to others that may reasonably be expected from the research;

4. A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

5. A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

6. For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

7. An explanation of who to contact for answers to pertinent questions about the research and research subject's rights, and who to contact in the event of a research-related injury to the subject; and

8. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

C. ~~No legally authorized representative may consent to nontherapeutic research unless the committee determines that such nontherapeutic research will present no more than a minor increase over minimal risk to the participant. No nontherapeutic research shall be performed without the consent of the human participant.~~ When the HRRC determines that it is appropriate, one or more of the following additional elements of informed consent shall also be provided to each subject:

1. A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) that are currently unforeseeable;

2. Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;

3. Any additional costs to the subject that may result from participation in the research;

4. The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

5. A statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject; and

6. The approximate number of subjects involved in the project.

D. The ~~committee~~ HRRC may approve a consent procedure ~~which~~ that does not include or which alters some or all of the elements of informed consent set forth in ~~22VAC30-40-10. The committee may~~ this section, or waive the ~~requirements~~ requirement to obtain ~~some or all~~ informed consent provided the ~~committee~~ HRRC finds and documents that:

1. The research ~~involves no more than minimal risk to the human participants;~~ or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine:

a. Public benefit or service programs;

b. Procedures for obtaining benefits or services under those programs;

c. Possible changes in or alternatives to those programs or procedures; or

d. Possible changes in methods or levels of payment for benefits or services under those programs; and

~~2. The waiver or alteration will not adversely affect the rights and welfare of the human participants;~~

~~3.~~ 2. The research could not practicably be carried out without the waiver or alteration~~; and~~.

~~4. Whenever appropriate, the human participants will be provided with additional pertinent information after participation.~~

E. ~~Except as provided in subsection F of this section, the consent form may be either of the following:~~ The HRRC may approve a consent procedure that does not include or that alters some or all of the elements of informed consent set forth in subsection B of this section, or waive the requirements to obtain informed consent provided the HRRC finds and documents that:

~~1. A written consent document that embodies the elements of informed consent required by 22VAC30-40-10. This form may be read to the participant or the participant's legally authorized representative, but in any event, the investigator shall give either the participant or the representative adequate opportunity to read it before it is signed; or~~

~~2. A short form written consent document stating that the elements of informed consent required by 22VAC30-40-10 have been presented orally to the participant or the participant's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the committee shall approve a written summary of what is to be said to the participant or the representative. Only the short form itself is to be signed by the participant or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy~~

~~of the summary. A copy of the summary shall be given to the human participant or the representative, in addition to a copy of the short form.~~

1. The research involves no more than minimal risk to the subject;

2. The waiver or alteration will not adversely affect the rights and welfare of the subjects;

3. The research could not practicably be carried out without the waiver or alteration; and

4. Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

F. ~~The committee may waive the requirement for the research investigator to obtain a signed consent form for some or all participants if it finds that the only record linking the participant and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality and there is no greater than a minimal risk of physical or mental harm to the human participant. Each participant will be asked whether the participant wants documentation linking the participant with the research, and the participant's wishes will govern. In cases where the documentation requirement is waived, the committee may require the investigator to provide participants with a written statement regarding the research.~~ The informed consent requirements in this chapter are not intended to preempt any applicable federal, state, or local laws that require additional information to be disclosed in order for informed consent to be legally effective.

G. Nothing in this chapter is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal or state law, or local ordinance.

H. Notwithstanding consent by a legally authorized representative, no person shall be forced to participate in any human subjects research. Each human subject shall be given a copy of the signed consent form required by this section, except as provided for in subsection J of this section.

I. No legally authorized representative may consent to nontherapeutic research unless the HRRC determines that such nontherapeutic research will present no more than a minor increase over minimal risk to the prospective subject. No nontherapeutic research shall be performed without the consent of the human subject.

J. Documentation of informed consent.

1. Except as provided in subdivision 3 of this subsection, informed consent shall be documented by the use of a written consent form approved by the HRRC and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.

2. Except as provided in subdivision 3 of this subsection, the consent form may be either of the following:

a. A written consent document that embodies the elements of informed consent required in subsection B of this section. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the subject's legally authorized representative adequate opportunity to read it before it is signed; or

b. A short form written consent document stating that the elements of informed consent required in subsection B of this section have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the HRRC shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the legally authorized representative, in addition to a copy of the short form.

3. The HRRC may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

a. That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

b. That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context. In cases in which the documentation requirement is waived, the HRRC may require the investigator to provide subjects with a written statement regarding the research.

22VAC30-40-110. ~~Committee~~ HRRC records.

A. ~~An institution, or when appropriate a committee,~~ The HRRC shall prepare and maintain adequate documentation of ~~committee~~ HRRC activities, including the following:

1. Copies of all research ~~proposals~~ applications reviewed, scientific evaluations, if any, that accompany the ~~proposals~~ applications, approved ~~sample~~ consent documents, progress reports submitted by investigators, and reports of injuries to ~~participants~~ subjects;

2. Minutes of ~~committee~~ HRRC meetings which shall be in sufficient detail to show attendance at the meetings; actions

taken by the ~~committee~~ HRRC; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution;

3. Records of continuing review activities;

4. Copies of all correspondence between the ~~committee~~ HRRC and the ~~research~~ investigators;

5. A list of all ~~committee~~ HRRC members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to HRRC deliberations; and any employment or other relationship between each member and the covered entity, for example: full-time employee, part-time employee, member of governing panel or board, or paid or unpaid consultant;

6. ~~Written procedures for the committee~~ Statements of significant new findings provided to participants; and

7. ~~Statements of significant new findings provided to participants.~~ Written procedures for the HRRC that shall include:

a. Conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the department;

b. Determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous HRRC review;

c. Ensuring prompt reporting to the HRRC of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which HRRC approval has already been given, may not be initiated without HRRC review and approval except when necessary to eliminate apparent immediate hazards to the subject; and

d. Ensuring prompt reporting to the HRRC and the commissioner of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the HRRC and (ii) any suspension or termination of HRRC approval.

B. The records required by this chapter shall be retained for at least three years, and records relating to research which is conducted shall be retained for at least three years after completion of the research. All records shall be accessible for inspection and copying by authorized employees or agents of the department or federal agency at reasonable times and in a reasonable manner.

C. The HRRC shall ensure that an overview of approved human subject research projects and the results of such projects are made public on the department's website unless otherwise exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

22VAC30-40-120. Mandatory reporting.

~~Each research review committee~~ The HRRC shall submit to the Governor, the General Assembly, and the commissioner or his designee at least annually a report on the human subjects research projects reviewed and approved by the ~~committee~~ HRRC, including any significant deviations from the proposals as approved.

22VAC30-40-130. Role of ~~the department and~~ the commissioner.

A. The commissioner shall ~~establish and~~ maintain records of ~~institutional~~ federal assurances, annual reports, and summary descriptions of research projects.

B. The commissioner shall review communications from ~~committees~~ the HRRC reporting violations of research protocols which led to suspension or termination of the research to ensure that appropriate steps have been taken for the protection of the rights of human ~~research participants~~ subjects.

C. The commissioner shall arrange for ~~the~~ printing and dissemination of copies of these regulations.

22VAC30-40-140. Applicability of state policies.

Nothing in this chapter shall be construed as limiting in any way the rights of ~~participants~~ human subjects in research under regulations promulgated in response to ~~§§ 32.1-162.19 and 37.1-84.1~~ Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.

22VAC30-40-150. Applicability of federal policies.

~~Human research at institutions which~~ The conduct of human subjects research that is subject to policies and regulations for the protection of human ~~participants~~ subjects promulgated by any agency of the federal government shall be exempt from requirements of this chapter. ~~Such institutions~~ When the HRRC reviews or approves federally funded or sponsored human research proposals, the HRRC shall notify the commissioner at least annually of ~~their~~ its compliance with ~~the~~ federal policies and regulations ~~of federal agencies~~ for the protection of human research subjects.

22VAC30-40-160. Additional protection for minors involved as subjects in research.

A. Research not involving greater than minimal risk. The covered entity may conduct or fund research in which the HRRC finds that no greater than minimal risk to minors is presented, only if the HRRC finds that adequate provisions

are made for soliciting the assent of the minors and the permission of their parents or guardians, pursuant to subsection E of this section.

B. Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects. The covered entity may conduct or fund research in which the HRRC finds that more than minimal risk to minors is presented by an intervention or procedure that holds out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is likely to contribute to the subject's well-being, only if the HRRC finds that:

1. The risk is justified by the anticipated benefit to the subjects;

2. The relation of the anticipated benefit to the risk is at least as favorable to the subjects as that presented by available alternative approaches; and

3. Adequate provisions are made for soliciting the assent of the minors and permission of their parents or guardians, pursuant to subsection E of this section.

C. Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition. The covered entity may conduct or fund research in which the HRRC finds that more than minimal risk to minors is presented by an intervention or procedure that does not hold out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is not likely to contribute to the well-being of the subject, only if the HRRC finds that:

1. The risk represents a minor increase over minimal risk;

2. The intervention or procedure presents experiences to subjects that are reasonably commensurate with those inherent in their actual or expected medical, dental, psychological, social, or educational situations;

3. The intervention or procedure is likely to yield generalizable knowledge about the subjects' disorder or condition that is of vital importance for the understanding or amelioration of the subjects' disorder or condition; and

4. Adequate provisions are made for soliciting assent of the minors and permission of their parents or guardians, pursuant to subsection E of this section.

D. Research not otherwise approvable that presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of minors. The covered entity may conduct or fund research that the HRRC does not believe meets the requirements pursuant to subsection A, B, or C of this section only if:

1. The HRRC finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of minors; and

2. The Secretary of the United States Department of Education, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, has determined either that:

a. The research in fact satisfies the conditions pursuant to subsection A, B, or C of this section, as applicable; or

b. (i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of minors; (ii) the research will be conducted in accordance with sound ethical principles; and (iii) adequate provisions are made for soliciting the assent of minors and the permission of their parents or guardians, pursuant to subsection E of this section.

E. Requirements for permission by parents or guardians and for assent by minors.

1. In addition to the determinations required under other applicable subsections of this section, the HRRC shall determine that adequate provisions are made for soliciting the assent of the minors, if in the judgment of the HRRC the minors are capable of providing assent. In determining whether minors are capable of assenting, the HRRC shall take into account the ages, maturity, and psychological state of the minors involved. This judgment may be made for all minors to be involved in research under a particular protocol, or for each minor, as the HRRC deems appropriate. If the HRRC determines that the capability of some or all of the minors is so limited that they cannot reasonably be consulted or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the minors and is available only in the context of the research, the assent of the minors is not a necessary condition for proceeding with the research. Even if the HRRC determines that the subjects are capable of assenting, the HRRC may still waive the assent requirement under circumstances in which consent may be waived in accord with 22VAC30-40-100.

2. In addition to the determinations required under other applicable subsections of this section, the HRRC shall determine, in accordance with and to the extent that consent is required by 22VAC30-40-100, that adequate provisions are made for soliciting the permission of each minor's parent(s) or guardian(s). If parental permission is to be obtained, the HRRC may find that the permission of one parent is sufficient for research to be conducted pursuant to subsection A or B of this section. If research is covered pursuant to subsections C and D of this section and permission is to be obtained from parents, both parents

must give their permission unless one parent is deceased, unknown, incompetent, or not reasonably available, or if only one parent has legal responsibility for the care and custody of the minor. Only the legal custodial parent can give informed consent.

3. In addition to the provisions for waiver contained in 22VAC30-40-100, if the HRRC determines that a research protocol is designed for conditions or for a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused minors), it may waive the consent requirements in 22VAC30-40-100 and subdivision 2 of this subsection, provided an appropriate mechanism for protecting the minors who will participate as subjects in the research is substituted, and provided further that the waiver is not inconsistent with federal, state, or local law. The choice of an appropriate mechanism depends upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and their age, maturity, status, and condition.

4. Permission by parents or guardians must be documented in accordance with and to the extent required by 22VAC30-40-100 J.

5. If the HRRC determines that assent is required, it shall also determine whether and how assent must be documented.

F. Wards.

1. Minors who are wards of the state or any other agency, institution, or entity may be included in research approved under subsection C or D of this section only if that research is:

a. Related to their status as wards; or

b. Conducted in schools, camps, hospitals, institutions, or similar settings in which the majority of minors involved as subjects are not wards.

2. If research is approved under subdivision 1 of this subsection, the HRRC shall require appointment of an advocate for each minor who is a ward, in addition to any other individual acting on behalf of the minor as guardian or in loco parentis. One individual may serve as advocate for more than one minor. The advocate must be an individual who has the background and experience to act in, and agrees to act in, the best interest of the minor for the duration of the minor's participation in the research and who is not associated in any way (except in the role as advocate or member of the HRRC) with the research, the investigator or investigators, or the guardian organization.

VA.R. Doc. No. R07-294; Filed May 28, 2009, 11:18 a.m.

STATE BOARD OF SOCIAL SERVICES

Fast-Track Regulation

Title of Regulation: **22VAC40-670. Degree Requirements for Social Work/Social Work Supervision Classification Series (amending 22VAC40-670-10, 22VAC40-670-20).**

Statutory Authority: §§ 63.2-217 and 63.2-219 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on July 22, 2009.

Effective Date: August 6, 2009.

Agency Contact: Nancy Flanagan, Human Resource Manager, Department of Social Services, Division of Human Resources Management, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7033, FAX (804) 726-7020, TTY (800) 828-1120, or email nancy.flanagan@dss.virginia.gov.

Basis: Pursuant to §§ 63.2-217 and 63.2-219 of the Code of Virginia, the State Board of Social Services has authority to promulgate rules and regulations necessary for the operation of public assistance and social services programs.

Purpose: The amended regulation is needed to update the classification series for social workers. The classification series has not been changed since the early 1980s. Proposed changes to 22VAC40-675, Personnel Policies for Local Departments of Social Services, include adding several levels of social workers. This amendment adds the levels to this regulation and places the baccalaureate requirement in each level.

Rationale for Using Fast-Track Process: The fast-track process is being used because there is a sense of urgency regarding the effective date of the proposed changes. The local study has been approved by the board and the effective date for implementation is June 1, 2009. This regulatory action is expected to be noncontroversial because employees impacted by the proposed changes were involved in their development. The study was conducted by the Personnel Committee of the Virginia League of Social Services Executives in cooperation with the Department of Social Services' Division of Human Resource Management. Impacted employees have reviewed the recommended changes, made recommendations, and the recommendations were incorporated into the regulation. The Department of Social Services also sent the recommended changes to all local directors for review and comment prior to submitting this regulatory action.

Substance: The proposed regulatory action revises the terminology and titles to be used in the proposed update to the classification and compensation plan/structure.

Issues: There are no disadvantages to the public or to the Commonwealth. The advantages are that local departments of social services will be using a job structure that accurately reflects the occupations of the employees; promotes a reliable means for classifying jobs; updates terminology and titles; and provides for better recruitment and retention of local departments of social services staff.

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

Summary of the Proposed Amendments to Regulation. The Board of Social Services (Board) proposes to amend and consolidate social work job categories in the regulations that govern degree requirements for social workers.

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

Estimated Economic Impact. Current Board regulations contain seven categories of social work employees: Senior Social Work Supervisor, Social Work Supervisor, Principle Social Worker, Child Protective Services Worker II, Senior Social Worker, Child Protective Services Worker I and Social Worker.

This classification system has been in place since the early 1980s.

The Board proposes to amend these job classifications so that Senior Social Work Supervisors will just be called Social Work Supervisors, Social Work Supervisors will have the new title Social Worker IV, Principle Social Workers will be called Social Worker III and a Child Protective Services Worker II will be a Social Worker II. Individuals who now hold the titles of Senior Social Worker, Child Protective Services Worker I and Social Worker will, under this proposal, fall under the category of Social Worker I.

The Department of Social Services reports that these changes in classification are a housekeeping matter and will not affect social worker salaries; no employees of local Departments of Social Services are likely to incur salary reductions on account of these proposed changes. Affected entities and other interested individuals may gain some small benefit from having job titles corrected in these regulations.

Businesses and Entities Affected. These proposed regulations will affect all 120 local Departments of Social Services.

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

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

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

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

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

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

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

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

Summary:

The amendments update the occupational titles for social workers and require that local departments of social services cannot employ any person in any social work position that provides direct client services unless that person holds at least a baccalaureate degree.

CHAPTER 670
DEGREE REQUIREMENTS FOR SOCIAL ~~WORK/SOCIAL WORK SUPERVISION CLASSIFICATION SERIES~~ WORK OCCUPATIONAL GROUP

22VAC40-670-10. Definitions.

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

"Human services field" means the field of social work and related degrees, including counseling, gerontology, guidance and counseling, family and child development, psychology, sociology, or other related degrees determined by the Division of Human Resource Management based on the similarity of the curriculum and course content. It is the applicant's responsibility to provide information with the application~~,~~ if the applicant wishes the course content and curriculum to be so evaluated.

~~"Service Program/Service Program Supervision series" means the following classifications~~ "Social Work Occupational Group" includes the following occupational titles:

~~Senior~~ Social Work Supervisor;

Social ~~Work Supervisor~~ Worker IV;

~~Principle~~ Social Worker III;

~~Child Protective Services~~ Social Worker II; and

~~Senior~~ Social Worker~~,~~ I.

~~Child Protective Services Worker I; and~~

~~Social Worker.~~

For purposes of this chapter, Social Work Organizational Group does not include Social Work Manager.

22VAC40-670-20. Policy.

Section ~~63.1-26~~ 63.2-219 of the Code of Virginia requires the board to establish minimum entrance and performance standards~~,~~ .

~~Effective September 1, 1990, in~~ In order to be evaluated for vacancies in the ~~Service Program/Service Program Supervision classification series~~ Social Work Occupational Group, applicants shall:

1. Possess a minimum of a baccalaureate degree in the ~~Human Services~~ human services field; or

2. Possess a minimum of a baccalaureate degree in any field accompanied by a minimum of two years appropriate and related experience in a ~~Human Services~~ human services related area; or

3. To be considered for promotion, persons currently employed in the ~~Service Program/Service Program Supervision series~~ Social Work Occupational Group by a local agency prior to September 1, 1990, who do not meet the requirements of subdivision 1 or 2 ~~above~~ of this section, shall possess four years of appropriate and related experience in a human services area and must have successfully completed all available competency-based training related to the promotional area.

If an individual does not indicate possession of the requirements in subdivision 1, 2, or 3 ~~above~~ of this section on the application, he will not be qualified for the position.

Once the applicant has noted the possession of a baccalaureate degree in the ~~Human Services~~ human services field on the application or resume, the evaluation process will continue using knowledge, skill, and ability criteria.

Individuals employed in the ~~Service Program/Service Program Supervision classification series~~ Social Work Occupational Group prior to September 1, 1990, who do not meet the requirements of subdivision 1, 2, or 3 ~~above~~ of this section, will be retained in their current ~~classification~~ occupational title or any lesser ~~classification~~ occupational title without having to meet the above requirements. This includes the same ~~classification~~ occupational title in another local agency. These individuals will be required to meet the requirements of subdivision 1, 2, or 3 ~~above~~ of this section for application to any higher ~~classification~~ occupational title other than their current ~~classification~~ occupational title.

VA.R. Doc. No. R09-1302; Filed June 3, 2009, 9:23 a.m.

Fast-Track Regulation

Title of Regulation: **22VAC40-675. Personnel Policies for Local Departments of Social Services (amending 22VAC40-675-10, 22VAC40-675-60 through 22VAC40-675-100).**

Statutory Authority: §§ 63.2-217 and 63.2-219 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on July 22, 2009.

Effective Date: August 6, 2009.

Agency Contact: Nancy Flanagan, Human Resource Manager, Department of Social Services, Division of Human Resources Management, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7031, FAX (804) 726-7020, TTY (800) 828-1120, or email nancy.flanagan@dss.virginia.gov.

Basis: Pursuant to §§ 63.2-217 and 63.2-219 of the Code of Virginia, the State Board of Social Services has authority to promulgate rules and regulations necessary for the operation of public assistance and social services programs.

Purpose: The amended regulation is needed to make the changes in the local compensation and classification plan. Major changes in the compensation and classification plan have not occurred since the early 1980s. This regulatory action proposes changes based on the recommendations from the approved local compensation and classification study.

Rationale for Using Fast-Track Process: The fast-track process is being used because there is a sense of urgency regarding the effective date of the proposed changes. The local study has been approved by the board and the proposed effective date for implementation was June 1, 2009. This regulatory action is expected to be noncontroversial because employees impacted by the proposed changes were involved in their development. The study was conducted by the Personnel Committee of the Virginia League of Social Services Executives in cooperation with the Department of Social Services' Division of Human Resource Management. Impacted employees have reviewed the recommended changes, made recommendations, and the recommendations were incorporated into the regulation. The Department of Social Services also sent the recommended changes to all local directors for review and comment prior to submitting this regulatory action.

Substance: This action updates the classification specifications and compensation pay structure to acceptable human resource standards. Classification descriptions have been changed to include today's technology and to allow for career progression. The compensation structure has changed from a grade and step model to a broad band model. New applicable terminology has been included throughout the changes. Occupational group descriptions can include several levels or former classification descriptions. Pay bands are wider (190%) and include several (former pay grades). The changes allow for more flexibility at the local level and set a foundation for career growth within the local departments of social services.

Issues: There are no disadvantages to the public or to the Commonwealth. The advantages are that local departments of social services will be using a job structure that accurately reflects the occupations of the employees; promotes a reliable means for classifying jobs; updates terminology and titles; and provides for better recruitment and retention of local departments of social services staff.

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

Summary of the Proposed Amendments to Regulation. The Board of Social Services (Board) proposes to update definitions, other outdated language and the title of a document that is incorporated by reference in their regulations governing personnel policies for local Departments of Social Services.

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

Estimated Economic Impact. Definitions in the Board's regulations governing personnel policy, as well as other wording and code citations, were last updated in the 1980s. The Board proposes to change definitions and other language in these regulations to account for changes in commonly used terminology as well as changes to other Department of Social Services (DSS) regulations that are being promulgated concurrent to this action. As these changes are clarifying rather than substantive, no local departments are likely to incur any expenses on account of this regulatory action. To the extent that outdated language/citations may have confused the staff of local departments, these proposed changes will provide the benefit of clarity.

Businesses and Entities Affected. These proposed regulations will affect 86 local Departments of Social Services.

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

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

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

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

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

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

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

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

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

Summary:

The regulatory action amends regulations that describe the position descriptions and compensation structure used by local departments of social services. This action allows for updates to the way local jobs are described/compensated using up-to-date acceptable methods. The proposed changes are being made as a result of the local compensation and classification study completed in 2007.

Part I
General Provisions

22VAC40-675-10. Definitions.

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

"Administrative manual" means the ~~Administrative~~ Human Resources Manual for Local Departments of Social Services ~~Human Resource Management~~, which outlines the personnel policies and procedures.

"Board" means the State Board of Social Services.

"Classification" means the systematic grouping of positions based on shared characteristics.

~~"Class specification" means a detailed statement that describes the characteristic elements of each classification and identifies the duties and KSAs.~~

"Commissioner" means the Commissioner of the Virginia Department of Social Services, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Deviate" means to adopt all or portions of the local jurisdiction personnel policies.

"Jurisdiction" or "local jurisdiction" means the city, county, or town under which the local department is a governmental unit.

"KSA" means a knowledge, skill, or ability needed to perform a position.

"Local board" means the local board of social services representing one or more counties or cities.

"Local compensation plan" is the locally developed ~~pay plan~~ compensation schedule that lists ~~classifications~~ occupational titles, salary ~~grades, and pay steps of intervening increments~~ bands/tiers from the minimum to the maximum amounts established for each ~~grade~~ bands/tiers, and includes other pay actions.

"Local department" means the local department of social services of any city or county of this Commonwealth.

"Local director" means the director or his designated representative of the local department of the city or county.

"Merit system plan" means those regulations adopted by the board in the development and operation of a system of personnel administration meeting requirements of the federal Department of Health and Human Services as relates to compliance with federal merit system standards set forth in the Code of Federal Regulations (5 CFR Part 900).

"Occupational group description" means a detailed statement that describes the characteristic elements of each occupational level within the occupational group.

"Salary range" means ~~salary grades and pay steps of intervening increments from the minimum to the maximum established for each grade, which includes reimbursable and nonreimbursable steps~~ the range that identifies the minimum and maximum compensation rate authorized for a specific pay band and a specific tier within the pay band.

"State classification plan" means the department's classification plan that consists of approved ~~classifications~~ occupational titles and their corresponding ~~class~~ groups, salary grades, classification codes, equal employment opportunity codes and effective dates.

"State compensation plan" means the department's pay plan, which provides local departments a basis ~~to develop~~ for developing local compensation plans.

Part II
State Classification and Compensation

22VAC40-675-60. State classification plan.

The state classification plan consists of a broad range of approved ~~classifications~~ occupational titles and accompanying ~~specifications~~ occupational group descriptions for use by the local departments to develop their local compensation plans to administer the programs set forth in Title 63.2 of the Code of Virginia.

22VAC40-675-70. Commissioner's responsibilities.

A. The commissioner shall establish the state classification plan and shall submit the plan to the board for approval.

B. The commissioner shall maintain the state classification plan to ensure that it has the appropriate numbers and types of ~~classifications~~ occupational titles to meet the needs of local departments.

22VAC40-675-80. State compensation plan.

A. The board shall approve a state compensation plan to ensure that it has the appropriate numbers and types of ~~classifications~~ occupational titles to meet the needs of local departments.

B. The board shall review the state compensation plan as needed.

C. Amendments to the state compensation plan shall be presented to the board for approval.

D. The department shall advise local departments of all changes to the state compensation plan and any mandates that require local department action.

22VAC40-675-90. Local compensation plans.

A. A local department, upon approval by the local board, shall have flexibility in developing the local compensation plan to select salary ranges within the approved state compensation plan that are suitable to local situations. The range for each ~~class~~ occupational title shall provide local minimum and maximum rates ~~and intervening steps~~. The local plan shall ensure that local minimum salary rates do not fall below the state compensation plan minimum salary for that ~~classification~~ occupational title.

B. A local compensation plan shall include policies and procedures for awarding salary increments, merit increases, special compensation for child and adult protective service work, employee or position status changes, and any other type of approved increases. Salary determinations shall be rendered in a fair and consistent manner to ensure equal pay for equal work.

C. All requested position actions by local departments must be reviewed and approved by the department prior to implementation.

D. Midyear changes to the local compensation plan must be submitted to the department for review and approval.

E. Local compensation policies and practices shall comply with federal and state laws including the federal Fair Labor Standards Act (29 USC §§ 201-219), the Administrative Manual and procedures provided by the department.

22VAC40-675-100. Other local compensation issues.

A. In localities where the governing body has elected to have a director of social services serve as the local board, reimbursement for governing body assigned expenses shall be in accordance with § 63.2-310 of the Code of Virginia.

B. Provisions shall be made for overtime worked in accordance with the Fair Labor Standards Act (29 USC §§ 201-219). The reimbursement shall be up to the reimbursable maximum of the applicable ~~position classification~~ occupational title. Local departments with approved deviating compensation plans will also be reimbursed up to the maximum of the applicable position ~~classification~~ occupational title. When the local deviating maximum exceeds the state reimbursable maximum, local-only funds shall be used to compensate for overtime.

C. Reimbursements shall be made for absences that result from the closing of local departments' operations because of inclement weather conditions or other authorized closing.

D. Bonuses for employees of local departments of social services shall be consistent with § 15.2-1508 of the Code of Virginia and with procedures provided by the department.

DOCUMENT INCORPORATED BY REFERENCE (22VAC40-675)

~~Administrative~~ Human Resource Manual for Local Departments of Social Services, Virginia Department of Social Services, revised ~~September 2000~~ July 1, 2009.

VA.R. Doc. No. R09-1303; Filed June 3, 2009, 9:26 a.m.

STATE CORPORATION COMMISSION

Bureau of Insurance

June 4, 2009

Administrative Letter 2009-05

To: All Insurers and Other Interested Parties

Re: Legislation Enacted by the 2009 Virginia General Assembly

We have attached for your reference summaries of certain statutes enacted or amended and re-enacted during the 2009 Session of the Virginia General Assembly. The effective date of these statutes is July 1, 2009, except as otherwise indicated in this letter. Each organization to which this letter is being sent should review the summaries carefully and see that notice of these laws is directed to the proper persons, including appointed representatives, to ensure that appropriate action is taken to effect compliance with these new legal requirements. Copies of individual bills may be obtained at http://legis.state.va.us/. You may enter the bill number (not the chapter number) on the Virginia General Assembly Home Page, and you will be linked to the Legislative Information System. You may also link from the Legislative Information System to any existing section of the Code of Virginia. All statutory references made in the letter are to Title 38.2 (Insurance) of the Code of Virginia unless otherwise noted. All references to the Commission refer to the State Corporation Commission.

Please note that this document is a summary of legislation. It is neither a legal review and interpretation nor a full description of the legislative amendments affecting insurance-related laws during the 2009 Session. Each organization is responsible for review of the statutes pertinent to its operations.

/s/ Alfred W. Gross
Commissioner of Insurance

AGENT REGULATION

Chapter 140 (House Bill 2568)

The bill amends §§ 6.1-2.21:1 and 6.1-2.22 of the Consumer Real Estate Settlement Protection Act (CRESPA). The bill makes technical changes to the rights of the purchaser or borrower to select a settlement agent to provide escrow, closing, or settlement services in connection with a real estate transaction. Disclosure requirements are also expanded to include statements that the provisions of CRESPA may not be varied by an agreement between the parties; rights conferred by CRESPA may not be waived; and the seller may not require the use of a particular settlement agent as a condition of the sale of the property.

Chapter 256 (Senate Bill 938)

This bill amends §§ 6.1-2.26 and 6.1-2.27 of the Consumer Real Estate Settlement Protection Act (CRESPA) to specify that registration responsibilities for each type of settlement agent will be the sole responsibility of the appropriate licensing authority (the Commission for title insurance agents). The bill requires each licensing authority to provide its settlement agents with guidelines promulgated by the Virginia State Bar to prevent the unauthorized practice of law. This bill also specifies that the licensing authority may terminate administratively the registration of any settlement agent if the settlement agent no longer holds a license, fails to renew its registration or fails to comply with the financial responsibility requirements of § 6.1-2.21.

FINANCIAL REGULATION

Chapter 336 (House Bill 1756 and Senate Bill 1372)

The bill amends §§ 15.2-2703 (Counties, Cities and Towns), 65.2-801 (Workers' Compensation) and 65.2-1203 (Workers' Compensation) to provide for the merger of a local government group self-insurance association (association) into a local government group self-insurance pool (pool) to enable political subdivisions to provide workers' compensation insurance coverage for their employees.

Chapter 352 (House Bill 1935)

The bill enacts § 38.2-221.3 in the Provisions of a General Nature chapter to require the State Corporation Commission to hold company licensing applications and supporting documentation and information obtained during the course of an investigation confidential. The bill further specifies that the materials are not subject to subpoena, and may not be made public by the Commission or any other person. The Commission may grant access to (i) a regulatory official of any state or country; (ii) the National Association of Insurance Commissioners, its affiliate, or its subsidiary; or (iii) a law-enforcement authority of any state or country, provided that those officials are required under their law to maintain its confidentiality. Nothing in this section shall prohibit the Commission from (i) using such confidential information in furtherance of any regulatory or legal action; (ii) publishing any decisions, orders, findings, opinions, or judgments; or (iii) publishing any final report or any other report containing aggregated findings, provided that such reports, decisions, orders, findings, opinions, or judgments shall not disclose any such confidential information.

Chapter 602 (Senate Bill 1044)

The bill amends § 38.2-1300 in the Reports, Reserves and Examinations chapter to give the State Corporation Commission the discretion to permit insurers to file their annual financial statements electronically.

Chapter 642 (House Bill 1971)

The bill amends the requirements outlined in § 38.2-3723 in the Credit Life, Credit Accident and Sickness Insurance chapter for determining the minimum standard for the valuation for credit life insurance reserves and for credit accident and sickness insurance reserves. Amendments to § 38.2-3723 A provide for the use of the 2001 Commissioners' Standard Ordinary Male Composite Ultimate Mortality Table for determining the minimum standard for the valuation of credit life insurance reserves. Amendments also set forth the requirements for interest rate calculations. Amendments to § 38.2-3723 B provide for the use of the 1985 Commissioners' Individual Disability Table A for determining the minimum standard for the valuation of single premium credit disability contract reserves. Amendments also set forth the requirements for interest rate calculations. A new subsection C in § 38.2-3723 adds a provision requiring an insurer to establish an additional reserve liability for all credit life and disability contracts in the aggregate when the net premium refund liability exceeds the aggregate recorded contract reserve.

Chapter 717 (Senate Bill 1352)

The bill amends § 38.2-1329 in the Reports, Reserves and Examinations chapter as to the declaration of a dividend or distribution by an insurer that is a member of an insurance holding company system to its shareholders. Such a declaration shall confer no rights upon shareholders until the Commission has approved the payment of the ordinary dividend or other distribution, or until 30 days have passed since the Commission has received written notification of the declaration from the insurer. The bill requires that the Commission act on a disclaimer of affiliation that contains all the information required by the Commission within 30 days of receiving such information.

LIFE AND HEALTH

Chapter 226 (House Bill 2655)

The bill amends and reenacts § 38.2-3407.1 in the Accident and Sickness Insurance chapter relating to interest on accident and sickness claims proceeds. The bill provides that the section shall not apply to claims proceeds payable to an out-of-state provider of pharmacy services for pharmacy services rendered outside of the Commonwealth. The section shall apply, however, to claims proceeds payable to such an out-of-state provider if the state where the services are rendered fails to provide for the payment of interest on the claims proceeds, in which case the interest payable to the policyholder, insured, claimant, or assignee will be computed daily at the legal rate of interest from the 30th day following the insurer's receipt of proof of loss to the date of claim payment.

Chapter 299 (Senate Bill 1480)

The bill adds § 38.2-3301.1 to the Life Insurance Policies chapter to provide that, for the purpose of determining the commencement of the period when a policy owner of an individual life policy can exercise any statutory right to examine, surrender, or return the policy for cancellation, the delivery date must be:

1. The date of the signed receipt of policy delivery if the policy is (i) delivered by U.S. mail or other postal delivery system; or (ii) physically delivered to the policyowner by a representative of the insurer; or

2. The date of electronic transmission if the transmission is effected electronically according to the insurance title and any other state and federal law. The insurer must retain evidence of electronic transmittal for the life of the policy.

If an insurer does not deliver a policy as provided above, the burden of proof is on the insurer to establish policy delivery, in the event there is a dispute with the policyowner.

Notwithstanding subsections A and B of the bill, a policy is deemed to have been received by the policyowner as of its issue date if six months have passed since issuance and the policyowner has paid premiums for those six months.

Chapter 643 (House Bill 1972)

The bill amends § 38.2-233 in the Provisions of a General Nature Chapter and §§ 38.2-3724, 38.2-3729, 38.2-3735 and 38.2-3737 in the Credit Accident and Sickness Insurance Chapter. The bill adds language to provide that, for single premium credit insurance, the debtor must be given a notice that discloses the right to a refund of premium if the insurance is terminated prior to its scheduled maturity date, or if the debt is terminated or paid off earlier than scheduled. The notice must be provided at the time of contract and must include notice of the debtor's obligation to notify the insurer, as per § 38.2-233 G for credit property or credit involuntary unemployment insurance and § 38.2-3735 E for credit life or credit accident and sickness insurance. The notice must be signed and dated by the debtor and the agent, if any, soliciting the application or by the creditor's representative, if any, soliciting the enrollment request. A copy of the notice must be given to the debtor and a copy must be retained in the insurer's file. Refunds of five dollars or less are not required to be paid. Section 38.2-233 G includes the actual language required in the notice that must be included in any form for credit property or credit involuntary employment insurance. The subsection requires that the unearned premium calculation be calculated on a pro rata basis. Section 38.2-3724 is revised to include the notice language required for each individual policy or group certificate for credit life and credit accident and sickness insurance. Any refund for credit life or credit accident and sickness insurance can be paid or credited to the debtor or person entitled to the refund.

Chapter 653 (House Bill 2467)

The bill adds § 38.2-3100.3 to the Life Insurance chapter to provide requirements for life insurance or annuity contracts used to fund preneed funeral contracts. The bill defines a preneed funeral contract as "any agreement where payment is made by the insured prior to the receipt of services or supplies contracted for, which evidences arrangements prior to death for (i) providing funeral services or (ii) the sale of funeral supplies." The bill requires the inclusion within all applicable life insurance and annuity policies or certificates, of a provision specifying the means by which face amounts and death benefits will be adjusted, as per subsection C of § 54.1-2820.

Insurers proposing to issue individual or group life insurance policies or individual or group annuity contracts in Virginia for purposes of funding preneed funeral contracts must clearly disclose the intended purpose and market for such policies and contracts when submitting the forms with the Commission for approval, in accordance with § 38.2-316.

Chapter 796 (House Bill 2024) and Chapter 877 (Senate Bill 1411)

PLEASE NOTE: This letter provides only a brief summary of those sections in House Bill 2024 and Senate Bill 1411 that specifically relate to insurance, as addressed in items (1) and (2) below. Both bills also amend § 32.1-102.4 (Health) of the Code of Virginia, relating to a certificate of public need.

The following is a brief summary of the insurance components of the bills. With respect to item (1), more detailed information and guidance will be provided by separate Administrative Letter.

(1) To establish a plan of "basic health insurance coverage" that may be offered, sold, or issued by insurers and health services plans to small employers in Virginia, House Bill 2024 and Senate Bill 1411 both add §§ 38.2-3406.1 and 38.2-3406.2 to the Insurance Title and amend § 38.2-4214, the "sweep-in" provision applicable to health services plans. Essentially, with respect to these plans, it is permissible to exclude one or more of the state mandated health benefits, except for those requiring coverage for mammograms, pap smears, PSA testing, and colorectal screening (§§ 38.2-3418.1, 38.2-3418.1:2, 38.2-3418.7 and 38.2-3418.7:1, respectively). The bills also require that such plans allow for reimbursement to the mandated providers listed in § 38.2-3408, of covered services that such providers can legally render in Virginia. Several key terms are defined in the bills, certain disclosure and form requirements applicable to these plans are identified, and both bills include language specifically stating that the offering, sale, or issuance of policies with annual or lifetime benefit caps is not prohibited. Carriers offering plans pursuant to the bill must report to the Bureau annually the number of small employers and individuals covered by plans without mandated benefits, the coverage provided, and the cost of premiums and out-of-pocket expenses. The Bureau must compile the information and evaluate the impact of the plans and report to the Governor and General Assembly on August 1, 2010, and August 1, 2011.

(2) House Bill 2024 also adds § 38.2-3541.1 to the Code of Virginia, addressing special circumstances for the continuation of coverage after involuntary termination of employment. This section became effective immediately upon its passage on April 8, 2009. The section only applies to employees of small employers with less than 20 employees. The bill requires that, for the purpose of meeting the definition of "COBRA continuation coverage" in Title III of Division B of the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (the Act), employees involuntarily terminated from employment between September 1, 2008, and December 31, 2009 (or any period for which premium assistance specified in the Act as later amended), shall be offered the option to continue their group health coverage subject to the following:

- Coverage shall continue for up to nine months after the date of (i) involuntary termination for those terminated after enactment of the section; or (ii) after the date of notification required by subdivision 3 of the section; contingent on the employee's eligibility for premium assistance under the Act.
- Premium payments can be paid on a monthly basis to the group policyholder and cannot exceed 102% of the current premium rate for the group policy.
- Employers shall provide notice of availability of continuation. Notice must be provided based on the date of termination.
- The employee must elect the continuation of coverage within 60 days after notice of the plan enrollment options.

Chapter 839 (Senate Bill 1116)

The bill adds § 38.2-3418.15 to the Accident and Sickness chapter and amends § 38.2-3418.15 in the Health Maintenance Organizations (HMOs) chapter to require insurers, corporations, and HMOs to offer coverage for medically necessary prosthetic devices, their repair, fitting, replacement, and components. The coverage does not include repair and replacement due to neglect by the enrollee and does not include prosthetic devices designed primarily for athletic purposes. Insurers cannot impose any annual or lifetime dollar maximum on coverage for prosthetic devices other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy. The coverage may be subject to, and no more restrictive than, the provisions that apply to other benefits under the policy. The insurer shall not apply amounts paid

for prosthetic devices to any annual or lifetime dollar maximum applicable to other durable medical equipment covered under the policy other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy. No insurer, corporation, or HMO shall impose upon any person receiving benefits any coinsurance in excess of 30% of the carrier's allowable charge for such prosthetic devices or services when provided by an in-network provider. The bill provides that an insurer, corporation, or HMO may require preauthorization to determine medical necessity and the eligibility of benefits for prosthetic devices and components, in the same manner that prior authorization is required for any other covered benefits. The bill applies to insurance policies, contracts, or plans delivered, issued for delivery, reissued, or extended in the Commonwealth on or after January 1, 2010, or at any time thereafter when any term of the policy, contract or plan is changed or premium adjustments are made. The bill does not apply to short-tem travel, accident only, limited or specified disease, or individual conversion policies or contracts, or policies or contracts designed for issuance to persons eligible for Medicare, or similar coverage under government plans.

NOTE: See Also Chapter 642 (House Bill 1971)

PROPERTY AND CASUALTY

Chapter 215 (House Bill 2430)

The bill adds § 38.2-325 (Provisions Relating to Insurance Policies) to allow insurers and their policyholders to agree to communicate electronically. The bill also amends §§ 38.2-231, 38.2-2113, 38.2-2114, 38.2-2208, and 38.2-2212 pertaining to nonrenewal notice requirements to allow nonrenewal notices to be provided electronically as long as the insurer and the policyholder mutually agree to this manner of communication. In addition, any nonrenewal notice provided electronically to an insured pursuant to the above referenced Code sections shall also be provided to the agent of record electronically. The notice sent to the agent of record may be a copy of the notice sent to the insured or a list of insureds' names, policy numbers, and termination dates. Notice need not be given to an agent if the agent is an employee of the insurer, is a nonemployee exclusive agent of the insurer, or has waived the receipt of such notices in writing. Evidence of transmittal must be retained by the insurer for one year.

Chapter 357 (House Bill 1974) and Chapter 545 (Senate Bill 1013)

The bills amend § 38.2-2217 A to add a provision that a motor vehicle crash prevention course for persons who are fifty-five years of age and older may be delivered through a computer-based medium via the Internet or other electronic means that is acceptable to the Department of Motor Vehicles. The medium utilized must have security features to ensure that the person who takes the course and passes the examination is also the person who receives the completion certificate. Insurers may provide a credit for their insureds who take a course via the Internet. A credit must be given for classroom courses successfully passed.

Chapter 442 (House Bill 1887)

The bill amends § 38.2-2114 (Fire Insurance Policies) regarding insurer cancellations of policies insuring owner-occupied dwellings. Insurers may cancel a policy during the policy period if there has been a completed foreclosure action by the second party where the property has been sold by the trustee under a deed of trust and the sale has been properly recorded in the land title records of jurisdiction in which the property is located.

Chapter 664 (House Bill 1982)

The bill amends § 38.2-1903.1 pertaining to the exemption from certain form approval and filing requirements for policies issued to large commercial risks. Automobile policies issued to large commercial risks will no longer be required to comply with the commercial automobile standard policy forms promulgated by the Commission nor will they have to be filed with the Commission. The bill also allows any officer of the corporation from a large commercial risk to sign the annual certification form.

NOTE: See Also Chapter 643 (House Bill 1972)

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AT RICHMOND, JUNE 1, 2009

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2009-00276

Ex Parte: In re: annual fees for
licensed credit counseling agencies

ORDER SCHEDULING HEARING

On April 17, 2009, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposed regulation setting forth a schedule of annual fees to be paid by credit counseling agencies licensed under Chapter 10.2 of Title 6.1 of the Code of Virginia. The Order and proposed regulation were published in the Virginia Register on May 11, 2009, posted on the Commission's website, and mailed to all licensed credit counseling agencies and other interested parties. Interested parties were afforded the opportunity to file written comments or request a hearing on or before May 20, 2009.

Comments on the proposed regulation were filed by Credit Card Management Services, Inc.; the Center for Child & Family Services d/b/a Consumer Credit Counseling Services of Hampton Roads; American Debt Counseling, Inc.; Family Credit Counseling Service, Inc. d/b/a Family Credit

Management Services; and Senator John Miller. The American Association of Debt Management Organizations filed comments on the proposed regulation and requested a hearing.

NOW THE COMMISSION, having considered the foregoing, is of the opinion that a hearing should be held to consider the adoption of the proposed regulation.

IT IS THEREFORE ORDERED THAT:

(1) The Commission shall conduct a hearing in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, at 10 a.m. on October 28, 2009, to consider the adoption of the proposed regulation that was attached to the Order to Take Notice.

(2) The Commission's Division of Information Resources shall cause a copy of this Order to be sent to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) This Order shall be posted on the Commission's website at http://www.scc.virginia.gov/case.

(4) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Paul Donohue, Credit Card Management Services, Inc., 4611 Okeechobee Boulevard, Suite 114, West Palm Beach, Florida 33417; Michael Edmonds, Executive Director, Center for Child & Family Services, d/b/a Consumer Credit Counseling Services of Hampton Roads, P.O. Box 7315, 2021 Cunningham Drive, Suite 400, Hampton, Virginia 23666; Alan Silverberg, Chief Executive Officer, American Debt Counseling, Inc., 14051 NW 14th Street, Sunrise, Florida 33323; Patrick F. Steva, Legal Compliance Coordinator, Family Credit Counseling Service, Inc., d/b/a Family Credit Management Services, 4306 Charles Street, Rockford, Illinois 61108; Mark Guimond, Executive Director, American Association of Debt Management Organizations, 5210 Laurelwood Drive, Kingwood, Texas 77345; and to the Commissioner of Financial Institutions, who shall mail a copy of this Order to all licensed credit counseling agencies and such other interested parties as he may designate.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

Notice of Changes to the Compulsory Minimum Training Standards for Entry Level Law-Enforcement Officers

The Committee on Training of the Criminal Justice Services Board has approved changes to the training objectives, criteria, and lesson plan guides of the Compulsory Minimum Training Standards for Entry Level Law Enforcement Officers as part of its annual review under 6VAC20-20-25. Copies of the changes may be obtained by contacting Judith Kirkendall, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, or judith.kirkendall@dcjs.virginia.gov. A copy may be downloaded from the website by going to www.dcjs.virginia.gov, click on Standards and Training under quick links, click on Compulsory Minimum Training Standards in the left column, click on law enforcement in the center column, and click on 2008 Changes to Entry-level Law Enforcement Training Standards at the top of the table of contents.

Notice of Changes to the Compulsory Minimum Training Standards for Entry Level Jailors

The Committee on Training of the Criminal Justice Services Board has approved changes to the training objectives, criteria, and lesson plan guides of the Compulsory Minimum Training Standards for Entry Level Jailors as part of its annual review under 6VAC20-50-25. Copies of the changes may be obtained by contacting Judith Kirkendall, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, or judith.kirkendall@dcjs.virginia.gov. A copy may be downloaded from the website by going to www.dcjs.virginia.gov, click on Standards and Training under quick links, click on Compulsory Minimum Training Standards in the left column, click on jail/court security/civil process in the center column, and click on 2008 Changes to Entry-level Jail Training Standards at the top of the table of contents.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Draft 2010 Water Quality Assessment Guidance Manual

On June 22, 2009, the Virginia Department of Environmental Quality (DEQ) will release the draft 2010 Water Quality Assessment Guidance Manual for public comment.

A copy of the draft 2010 Water Quality Assessment Guidance Manual (DEQ Assessment Guidance) is available to download from the DEQ Water Quality Assessment webpage at http://www.deq.virginia.gov/wqa/. A hard copy can also be requested from Harry Augustine, DEQ, Water Quality Assessment Coordinator, using his contact information below.

Section 62.1-44.19:5 C of the Code of Virginia requires DEQ to develop and publish the procedures used for defining and determining impaired waters and provide for public comment on these procedures. The DEQ Assessment Guidance contains the assessment procedures to be used for the development of Virginia's 2010 § 305(b)/§ 303(d) Integrated (i.e., combined Water Quality Assessment and Impaired Waters) Report. The 2010 Integrated Report is due to the U. S. Environmental Protection Agency (EPA) by April 1, 2010.

The DEQ Assessment Guidance seeks to address all key elements of previous EPA assessment guidance including the 2010 guidance updates released on May 5, 2009. EPA has reserved the right to amend their guidance at a later date. The DEQ guidance also reflects changes in Virginia's Water Quality Standards that were sent to EPA in 2009 for review and approval. Most notably there are proposed changes in many of the criteria for toxics in fish tissue and public water supply as well as revised procedures for assessing water quality in lakes. If EPA requires changes at a later date, the DEQ Assessment Guidance will be revised accordingly and noticed for additional public comment.

Written comments on the DEQ Assessment Guidance will be accepted through Friday, July 24, 2009, at 4:30 p.m. Comments can be submitted via email (Microsoft Word attachment is preferred) or U.S. mail. Written comments should include the name, address, telephone number, and, if applicable, the email address of each person and/or organization submitting comments. Comments and related correspondence should be addressed to Harry Augustine. DEQ responses to all comments received will be made collectively, via a response document. The response document and final assessment guidance will be posted on the assessment webpage when completed, at the URL above.

Contact Information: Harry Augustine, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4037, FAX (804) 698-4032, or via email harry.augustine@deq.virginia.gov.

Proposed Consent Order - Town of Front Royal

An enforcement action has been proposed for the Town of Front Royal for alleged violations in the town. A proposed consent order describes a settlement to resolve alleged unauthorized discharges to South Fork of the Shenandoah River. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. David C. Robinett will accept comments by email dcrobinett@deq.virginia.gov, FAX (540) 574-7878, or postal mail Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801 from June 22, 2009, to July 22, 2009.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on May 27, 2009. The order may be viewed at the State Lottery Department, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Thirty-Seven (09)

"Virginia Lottery's Corvette® Cash Sweepstakes" (effective 5/26/09)

Director's Order Number Thirty-Eight (09)

Virginia's Instant Game Lottery 1111; "Corvette® Cash" (effective 5/26/09)

Director's Order Number Thirty-Nine (09)

Virginia's Instant Game Lottery 1135; "Flip Flop Cash" (effective 5/28/09)

Director's Order Number Forty (09)

Virginia's Instant Game Lottery 1136; "Lucky $500!" (effective 5/28/09)

Director's Order Number Forty-One (09)

Virginia's Instant Game Lottery 1141; "Dollars & Diamonds" (effective 5/28/09)

Director's Order Number Forty-Two (09)

Virginia's Twentieth On-Line Game; "Fast Play Bonus Bingo" (effective 5/28/09)

Director's Order Number Forty-Three (09)

Virginia's Twenty-First On-Line Game; "Fast Play Find The 9's" (effective 5/28/09)

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.