



# Virginia Register of Regulations

VOL. 25 ISS. 26

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

AUGUST 31, 2009

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**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.

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

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

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## August 2009 through April 2010

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
<b>INDEX 3 Volume 25</b>		
		<b>July 2009</b>
25:26	August 12, 2009	August 31, 2009
<b>FINAL INDEX Volume 25</b>		
		<b>October 2009</b>
26:1	August 26, 2009	September 14, 2009
26:2	September 9, 2009	September 28, 2009
26:3	September 23, 2009	October 12, 2009
26:4	October 7, 2009	October 26, 2009
26:5	October 21, 2009	November 9, 2009
26:6	November 4, 2009	November 23, 2009
26:7	November 17, 2009 ( <b>Tuesday</b> )	December 7, 2009
<b>INDEX 1 Volume 26</b>		
		<b>January 2010</b>
26:8	December 2, 2009	December 21, 2009
26:9	December 15, 2009 ( <b>Tuesday</b> )	January 4, 2010
26:10	December 29, 2009 ( <b>Tuesday</b> )	January 18, 2010
26:11	January 13, 2010	February 1, 2010
26:12	January 27, 2010	February 15, 2010
26:13	February 10, 2010	March 1, 2010
26:14	February 24, 2010	March 15, 2010
<b>INDEX 2 Volume 26</b>		
		<b>April 2010</b>
26:15	March 10, 2010	March 29, 2010
26:16	March 24, 2010	April 12, 2010
26:17	April 7, 2010	April 26, 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 Spring 2009 VAC Supplement includes final regulations published through *Virginia Register* Volume 25, Issue 12, dated February 16, 2009, and fast-track regulations published through Virginia Register Volume 25, Issue 11, dated February 2, 2009). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 2. Agriculture</b>			
2 VAC 5-100-10 through 2VAC5-100-40	Repealed	25:16 VA.R. 2831	5/13/09
2 VAC 5-320-10	Erratum	25:13 VA.R. 2565	--
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	--
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-50-230 emer	Added	25:11 VA.R. 1929	1/13/09-1/12/10
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 15-20-65	Amended	25:25 VA.R. 4373	8/1/09
4 VAC 15-40-60	Amended	25:25 VA.R. 4376	8/1/09
4 VAC 15-40-170	Amended	25:25 VA.R. 4377	8/1/09
4 VAC 15-40-195	Added	25:25 VA.R. 4377	8/1/09
4 VAC 15-40-210	Amended	25:25 VA.R. 4377	8/1/09
4 VAC 15-50-10	Amended	25:25 VA.R. 4377	8/1/09
4 VAC 15-50-20	Amended	25:25 VA.R. 4377	8/1/09
4 VAC 15-50-21	Added	25:25 VA.R. 4378	8/1/09
4 VAC 15-50-22	Added	25:25 VA.R. 4378	8/1/09
4 VAC 15-50-70	Amended	25:25 VA.R. 4378	8/1/09
4 VAC 15-50-71	Amended	25:25 VA.R. 4378	8/1/09
4 VAC 15-50-110	Amended	25:25 VA.R. 4379	8/1/09
4 VAC 15-50-120	Amended	25:25 VA.R. 4379	8/1/09
4 VAC 15-70-50	Amended	25:25 VA.R. 4380	8/1/09
4 VAC 15-90-21	Amended	25:25 VA.R. 4380	8/1/09
4 VAC 15-90-23	Added	25:25 VA.R. 4380	8/1/09
4 VAC 15-90-70	Amended	25:25 VA.R. 4381	8/1/09
4 VAC 15-90-80	Amended	25:25 VA.R. 4381	8/1/09
4 VAC 15-90-90	Amended	25:25 VA.R. 4383	8/1/09
4 VAC 15-90-91	Amended	25:25 VA.R. 4383	8/1/09
4 VAC 15-170-21	Amended	25:25 VA.R. 4388	8/1/09

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-170-30	Amended	25:25 VA.R. 4388	8/1/09
4 VAC 15-210-20	Amended	25:25 VA.R. 4388	8/1/09
4 VAC 15-230-21	Amended	25:25 VA.R. 4389	8/1/09
4 VAC 15-230-60	Amended	25:25 VA.R. 4389	8/1/09
4 VAC 15-230-61	Amended	25:25 VA.R. 4389	8/1/09
4 VAC 15-240-81	Amended	25:25 VA.R. 4390	8/1/09
4 VAC 15-240-91	Amended	25:25 VA.R. 4390	8/1/09
4 VAC 15-270-20	Amended	25:25 VA.R. 4391	8/1/09
4 VAC 15-270-80	Amended	25:25 VA.R. 4391	8/1/09
4 VAC 20-260-30 emer	Amended	25:21 VA.R. 3783	6/1/09-6/30/09
4 VAC 20-260-30	Amended	25:23 VA.R. 4189	7/1/09
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 20-270-40	Amended	25:21 VA.R. 3783	6/1/09
4 VAC 20-270-50	Amended	25:21 VA.R. 3784	6/1/09
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 20-270-58	Amended	25:21 VA.R. 3784	6/1/09
4 VAC 20-270-60 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-320-70	Amended	25:21 VA.R. 3784	6/1/09
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 20-450-30	Amended	25:21 VA.R. 3785	6/1/09
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 20-650-10	Amended	25:21 VA.R. 3785	6/1/09
4 VAC 20-650-20	Amended	25:21 VA.R. 3786	6/1/09
4 VAC 20-650-30	Amended	25:21 VA.R. 3787	6/1/09
4 VAC 20-670-20	Amended	25:21 VA.R. 3788	6/1/09
4 VAC 20-670-25	Amended	25:21 VA.R. 3788	6/1/09
4 VAC 20-670-30	Amended	25:21 VA.R. 3788	6/1/09
4 VAC 20-670-40	Amended	25:21 VA.R. 3789	6/1/09
4 VAC 20-700-20	Amended	25:14 VA.R. 2598	3/1/09
4 VAC 20-880-30	Amended	25:21 VA.R. 3789	6/1/09
4 VAC 20-950-30	Amended	25:16 VA.R. 2833	4/1/09
4 VAC 20-1040-25	Amended	25:21 VA.R. 3789	6/1/09
4 VAC 20-1090-30	Amended	25:21 VA.R. 3790	6/1/09

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-1120-31	Added	25:21 VA.R. 3792	7/1/09
4 VAC 20-1120-32	Added	25:21 VA.R. 3792	7/1/09
4 VAC 20-1140-20	Amended	25:21 VA.R. 3793	6/1/09
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 20-1220 emer	Adding	25:25 VA.R. 4391	7/29/09-8/28/09
4 VAC 25-20 (Forms)	Amended	25:25 VA.R. 4392	--
4 VAC 25-31 (Forms)	Amended	25:16 VA.R. 2835	--
4 VAC 25-31 (Forms)	Amended	25:25 VA.R. 4392	--
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
4 VAC 25-40-1600	Amended	25:20 VA.R. 3482	7/8/09
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

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
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 25-130 (Forms)	Amended	25:25 VA.R. 4392	--
4 VAC 25-150 (Forms)	Amended	25:25 VA.R. 4392	--
4 VAC 25-170 (Forms)	Amended	25:25 VA.R. 4392	--
4 VAC 50-60-10	Amended	25:16 VA.R. 2838	7/1/09
4 VAC 50-60-1100 through 4VAC50-60-1140	Amended	25:16 VA.R. 2849-2851	7/1/09
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
4 VAC 50-60-1190	Amended	25:16 VA.R. 2871	7/1/09
<b>Title 5. Corporations</b>			
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
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 15-80-10	Amended	25:24 VA.R. 4289	9/3/09
6 VAC 15-80-211	Added	25:24 VA.R. 4292	9/3/09
6 VAC 20-20-25	Amended	25:22 VA.R. 4027	1/1/10
6 VAC 20-50-21	Amended	25:22 VA.R. 4029	1/1/10
<b>Title 8. Education</b>			
8 VAC 20-80-10 through 8 VAC 20-80-190	Repealed	25:21 VA.R. 3849	7/7/09
8 VAC 20-81-10 through 8 VAC 20-81-340	Added	25:21 VA.R. 3849	7/7/09
8 VAC 20-81-210	Errata	25:23 VA.R. 4262	--
8 VAC 20-131-5	Amended	25:21 VA.R. 3850	7/31/09
8 VAC 20-131-30	Amended	25:21 VA.R. 3851	7/31/09
8 VAC 20-131-50	Amended	25:21 VA.R. 3852	7/31/09
8 VAC 20-131-60	Amended	25:21 VA.R. 3857	7/31/09
8 VAC 20-131-80	Amended	25:21 VA.R. 3859	7/31/09
8 VAC 20-131-100	Amended	25:21 VA.R. 3859	7/31/09
8 VAC 20-131-140	Amended	25:21 VA.R. 3860	7/31/09
8 VAC 20-131-210	Amended	25:21 VA.R. 3860	7/31/09
8 VAC 20-131-270	Amended	25:21 VA.R. 3861	7/31/09
8 VAC 20-131-280	Amended	25:21 VA.R. 3862	7/31/09
8 VAC 20-131-290	Amended	25:21 VA.R. 3863	7/31/09

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
8 VAC 20-131-300	Amended	25:21 VA.R. 3864	7/31/09
8 VAC 20-131-310	Amended	25:21 VA.R. 3866	7/31/09
8 VAC 20-131-325	Amended	25:21 VA.R. 3867	7/31/09
8 VAC 20-131-360	Amended	25:21 VA.R. 3867	7/31/09
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
8 VAC 40-150-10 through 8 VAC 40-150-100	Added	25:25 VA.R. 4405-4408	7/31/09
<b>Title 9. Environment</b>			
9 VAC 5-10-20	Amended	25:12 VA.R. 2059	4/2/09
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
9 VAC 5-80-1945	Amended	25:20 VA.R. 3507	7/23/09
9 VAC 5-80-1955	Amended	25:20 VA.R. 3508	7/23/09
9 VAC 5-80-1965	Amended	25:20 VA.R. 3508	7/23/09
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
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 (Forms)	Amended	25:25 VA.R. 4408	--
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 25-260-275	Added	25:23 VA.R. 4190	8/20/09
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
9 VAC 25-720-120	Amended	25:12 VA.R. 2247	4/2/09



# Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-740 (Forms)	Amended	25:25 VA.R. 4408	--
<b>Title 10. Finance and Financial Institutions</b>			
10 VAC 5-10-10	Amended	25:24 VA.R. 4299	7/14/09
10 VAC 5-160-10	Amended	25:23 VA.R. 4191	7/1/09
10 VAC 5-160-70	Repealed	25:23 VA.R. 4193	7/1/09
10 VAC 5-160-80	Repealed	25:23 VA.R. 4193	7/1/09
10 VAC 5-161-10 through 10 VAC 5-161-60	Added	25:25 VA.R. 4409-4411	8/17/09
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
<b>Title 11. Gaming</b>			
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
11 VAC 10-180-35	Amended	25:17 VA.R. 3007	5/27/09
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
11 VAC 15-22-10	Amended	25:23 VA.R. 4194	8/19/09
11 VAC 15-22-20	Amended	25:23 VA.R. 4196	8/19/09
11 VAC 15-22-30	Amended	25:23 VA.R. 4196	8/19/09
11 VAC 15-22-110	Amended	25:23 VA.R. 4198	8/19/09
11 VAC 15-31-10	Amended	25:23 VA.R. 4200	8/19/09
11 VAC 15-31-20	Amended	25:23 VA.R. 4201	8/19/09
11 VAC 15-31-50	Amended	25:23 VA.R. 4203	8/19/09
<b>Title 12. Health</b>			
12 VAC 5-67-10 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-67-20 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-67-30 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-195-20	Amended	25:22 VA.R. 4063	7/6/09
12 VAC 5-195-30	Amended	25:22 VA.R. 4063	7/6/09
12 VAC 5-195-70	Amended	25:22 VA.R. 4064	7/6/09
12 VAC 5-195-140	Amended	25:22 VA.R. 4065	7/6/09
12 VAC 5-195-180	Amended	25:22 VA.R. 4065	7/6/09
12 VAC 5-195-190	Amended	25:22 VA.R. 4066	7/6/09
12 VAC 5-195-280 through 12 VAC 5-195-340	Amended	25:22 VA.R. 4067-4071	7/6/09
12 VAC 5-195-360	Amended	25:22 VA.R. 4071	7/6/09
12 VAC 5-195-370	Amended	25:22 VA.R. 4072	7/6/09
12 VAC 5-195-380	Repealed	25:22 VA.R. 4072	7/6/09
12 VAC 5-195-390	Amended	25:22 VA.R. 4072	7/6/09
12 VAC 5-195-400	Amended	25:22 VA.R. 4073	7/6/09
12 VAC 5-195-410	Amended	25:22 VA.R. 4073	7/6/09
12 VAC 5-195-420	Amended	25:22 VA.R. 4073	7/6/09
12 VAC 5-195-450	Amended	25:22 VA.R. 4073	7/6/09
12 VAC 5-195-460	Amended	25:22 VA.R. 4073	7/6/09
12 VAC 5-195-480 through 12 VAC 5-195-550	Amended	25:22 VA.R. 4074-4076	7/6/09
12 VAC 5-195-580	Amended	25:22 VA.R. 4076	7/6/09

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-195-590	Amended	25:22 VA.R. 4077	7/6/09
12 VAC 5-195-600	Amended	25:22 VA.R. 4079	7/6/09
12 VAC 5-195-610	Amended	25:22 VA.R. 4081	7/6/09
12 VAC 5-195-630	Amended	25:22 VA.R. 4081	7/6/09
12 VAC 5-195-640	Amended	25:22 VA.R. 4081	7/6/09
12 VAC 5-195-660	Amended	25:22 VA.R. 4082	7/6/09
12 VAC 5-195-670	Amended	25:22 VA.R. 4083	7/6/09
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
12 VAC 5-481-451	Amended	25:21 VA.R. 3888	8/6/09
12 VAC 30-10-150	Amended	25:14 VA.R. 2614	4/15/09
12 VAC 30-10-560	Amended	25:21 VA.R. 3898	7/23/09
12 VAC 30-10-930	Amended	25:14 VA.R. 2615	4/15/09
12 VAC 30-20-90	Amended	25:14 VA.R. 2615	4/15/09
12 VAC 30-20-140	Repealed	25:21 VA.R. 3899	7/23/09
12 VAC 30-20-141	Added	25:21 VA.R. 3900	7/23/09
12 VAC 30-20-210	Amended	25:20 VA.R. 3571	7/23/09
12 VAC 30-20-500	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-20-520	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-30-10	Amended	25:20 VA.R. 3577	7/9/09
12 VAC 30-30-20	Amended	25:21 VA.R. 3902	7/23/09
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 30-40-105	Added	25:21 VA.R. 3904	7/23/09
12 VAC 30-40-280	Amended	25:21 VA.R. 3904	7/23/09
12 VAC 30-40-290 emer	Amended	25:1 VA.R. 35	8/27/08-8/26/09
12 VAC 30-40-290	Amended	25:21 VA.R. 3905	7/23/09
12 VAC 30-50-10	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-50-226 emer	Amended	25:22 VA.R. 4085	7/1/09-6/30/10
12 VAC 30-50-420 emer	Amended	25:22 VA.R. 4089	7/1/09-6/30/10
12 VAC 30-50-430 emer	Amended	25:22 VA.R. 4091	7/1/09-6/30/10
12 VAC 30-60-200	Added	25:21 VA.R. 3907	7/23/09
12 VAC 30-60-500	Added	25:20 VA.R. 3586	7/9/09
12 VAC 30-70-50 emer	Amended	25:23 VA.R. 4205	7/2/09-7/1/10
12 VAC 30-80-20 emer	Amended	25:23 VA.R. 4208	7/2/09-7/1/10
12 VAC 30-80-30	Amended	25:21 VA.R. 3909	7/23/09
12 VAC 30-80-30 emer	Amended	25:25 VA.R. 4411	8/27/08-12/31/09
12 VAC 30-80-40	Amended	25:19 VA.R. 3408	7/1/09
12 VAC 30-80-40 emer	Amended	25:25 VA.R. 4411	8/4/08-12/31/09
12 VAC 30-80-95	Amended	25:12 VA.R. 2251	4/2/09
12 VAC 30-80-190 emer	Amended	25:25 VA.R. 4411	8/27/08-12/31/09
12 VAC 30-80-200 emer	Amended	25:23 VA.R. 4209	7/2/09-7/1/10
12 VAC 30-141-660	Amended	25:25 VA.R. 4412	9/16/09
12 VAC 35-200-10	Amended	25:25 VA.R. 4413	9/16/09
12 VAC 35-200-20	Amended	25:25 VA.R. 4415	9/16/09
12 VAC 35-200-30	Amended	25:25 VA.R. 4416	9/16/09
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 30-110-1500	Added	25:21 VA.R. 3912	7/23/09
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 30-120-140	Errata	25:23 VA.R. 4262	--
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
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-141-660 emer	Amended	25:10 VA.R. 1854	12/22/08-12/21/09
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
12 VAC 35-45-10 through 12 VAC 35-45-210	Repealed	25:21 VA.R. 3912	8/6/09
12 VAC 35-46-10 through 12 VAC 35-46-1140	Added	25:21 VA.R. 3914-3950	8/6/09
12 VAC 35-46-480	Erratum	25:24 VA.R. 4354	--
12 VAC 35-190-10	Amended	25:23 VA.R. 4211	8/19/09
12 VAC 35-190-21	Amended	25:23 VA.R. 4212	8/19/09
12 VAC 35-190-30	Amended	25:23 VA.R. 4212	8/19/09
12 VAC 35-190-41	Amended	25:23 VA.R. 4212	8/19/09
12 VAC 35-190-51	Amended	25:23 VA.R. 4213	8/19/09
<b>Title 13. Housing</b>			
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
13 VAC 10-40-20	Amended	25:21 VA.R. 3951	6/5/09
13 VAC 10-40-40	Amended	25:21 VA.R. 3954	6/5/09
13 VAC 10-40-50	Amended	25:21 VA.R. 3954	6/5/09
13 VAC 10-40-120	Amended	25:21 VA.R. 3956	6/5/09
13 VAC 10-40-130	Amended	25:21 VA.R. 3957	6/5/09
13 VAC 10-40-140	Amended	25:21 VA.R. 3960	6/5/09
13 VAC 10-40-160	Amended	25:21 VA.R. 3961	6/5/09
13 VAC 10-40-170	Amended	25:21 VA.R. 3961	6/5/09
13 VAC 10-40-220	Amended	25:21 VA.R. 3961	6/5/09
13 VAC 10-180-120	Added	25:23 VA.R. 4213	7/1/09
<b>Title 14. Insurance</b>			
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
<b>Title 15. Judicial</b>			
15 VAC 5-80-20	Amended	25:25 VA.R. 4417	7/31/09
15 VAC 5-80-30	Amended	25:25 VA.R. 4417	7/31/09
15 VAC 5-80-40	Amended	25:25 VA.R. 4418	7/31/09
<b>Title 16. Labor and Employment</b>			
16 VAC 15-21-30	Amended	25:20 VA.R. 3639	7/24/09
16 VAC 25-80-10	Repealed	25:23 VA.R. 4230-4231	8/20/09
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

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 25-90-1910.269 (p)(1)(ii)	Repealed	25:25 VA.R. 4418	9/18/09
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 25-90-1910.1020	Added	25:23 VA.R. 4230-4231	8/20/09
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
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 25-97-10 through 16 VAC 25-97-50	Added	25:25 VA.R. 4419-4420	9/18/09
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	Errata	25:22 VA.R. 4172	--
16 VAC 25-175-602 (a)(9)(ii)	Repealed	25:25 VA.R. 4420	9/18/09
16 VAC 25-175-1926.20	Added	25:20 VA.R. 3639-3640	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 25-175-1926.601 (b)(4)	Repealed	25:25 VA.R. 4420	9/18/09
16 VAC 25-175-1926.761	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.952 (a)(3)	Repealed	25:25 VA.R. 4420	9/18/09
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
<b>Title 18. Professional and Occupational Licensing</b>			
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 25-21-150	Amended	25:24 VA.R. 4302	10/1/09
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 48-50-10 through 18 VAC 48-50-200 emer	Added	25:5 VA.R. 1095-1100	11/13/08-11/12/09

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 76-10-10 through 18 VAC 76-10-70	Amended	25:23 VA.R. 4232-4234	7/1/09
18 VAC 76-10-90	Repealed	25:23 VA.R. 4234	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 85-20-21	Amended	25:23 VA.R. 4234	8/19/09
18 VAC 85-40-25	Amended	25:23 VA.R. 4235	8/19/09
18 VAC 85-50-21	Added	25:23 VA.R. 4235	8/19/09
18 VAC 85-80-10 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-25	Amended	25:23 VA.R. 4235	8/19/09
18 VAC 85-80-26 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-40 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-45 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-50 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-61 emer	Repealed	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-65 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-70 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-72 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-73 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-80 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-90 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-100 emer	Amended	25:5 VA.R. 1107	11/1/08-10/31/09
18 VAC 85-80-110 emer	Amended	25:5 VA.R. 1107	11/1/08-10/31/09
18 VAC 85-80-111 emer	Added	25:5 VA.R. 1108	11/1/08-10/31/09
18 VAC 85-101-26	Added	25:23 VA.R. 4235	8/19/09
18 VAC 85-110-36	Added	25:23 VA.R. 4235	8/19/09
18 VAC 85-120-30	Amended	25:23 VA.R. 4235	8/19/09
18 VAC 85-130-31	Added	25:23 VA.R. 4235	8/19/09
18 VAC 90-20-35	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-20-36	Amended	25:21 VA.R. 3973	7/22/09
18 VAC 90-20-200	Amended	25:22 VA.R. 4101	12/31/09
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 95-20-70	Amended	25:19 VA.R. 3420	7/1/09
18 VAC 95-20-70	Errata	25:22 VA.R. 4172	--
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 95-30-30	Errata	25:22 VA.R. 4172	--
18 VAC 105-20-60	Amended	25:18 VA.R. 3240	7/1/09
18 VAC 110-20 (Forms)	Amended	25:24 VA.R. 4335	--
18 VAC 110-20-10 emer	Amended	25:17 VA.R. 3018	4/10/09-4/9/10
18 VAC 110-20-10 through 18 VAC 110-20-70	Amended	25:24 VA.R. 4303-4309	9/2/09
18 VAC 110-20-20 emer	Amended	25:3 VA.R. 464	9/23/08-9/22/09
18 VAC 110-20-21	Added	25:17 VA.R. 3025	7/1/09
18 VAC 110-20-80 through 18 VAC 110-20-104	Amended	25:24 VA.R. 4310-4312	9/2/09
18 VAC 110-20-106 through 18 VAC 110-20-120	Amended	25:24 VA.R. 4312-4314	9/2/09
18 VAC 110-20-130	Amended	25:24 VA.R. 4314	9/2/09
18 VAC 110-20-140	Amended	25:24 VA.R. 4314	9/2/09
18 VAC 110-20-180 through 18 VAC 110-20-210	Amended	25:24 VA.R. 4315-4317	9/2/09
18 VAC 110-20-240	Amended	25:24 VA.R. 4317	9/2/09
18 VAC 110-20-270	Amended	25:24 VA.R. 4318	9/2/09
18 VAC 110-20-275	Amended	25:24 VA.R. 4319	9/2/09
18 VAC 110-20-280	Amended	25:24 VA.R. 4320	9/2/09
18 VAC 110-20-286	Added	25:24 VA.R. 4320	9/2/09
18 VAC 110-20-320	Amended	25:24 VA.R. 4321	9/2/09
18 VAC 110-20-340	Amended	25:24 VA.R. 4321	9/2/09
18 VAC 110-20-350	Amended	25:24 VA.R. 4321	9/2/09
18 VAC 110-20-355	Amended	25:24 VA.R. 4322	9/2/09
18 VAC 110-20-391	Added	25:24 VA.R. 4322	9/2/09
18 VAC 110-20-395	Amended	25:24 VA.R. 4322	9/2/09
18 VAC 110-20-400 emer	Amended	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-410	Amended	25:24 VA.R. 4322	9/2/09
18 VAC 110-20-425	Amended	25:24 VA.R. 4323	9/2/09
18 VAC 110-20-440	Amended	25:24 VA.R. 4324	9/2/09
18 VAC 110-20-450	Amended	25:24 VA.R. 4325	9/2/09
18 VAC 110-20-460	Amended	25:24 VA.R. 4325	9/2/09
18 VAC 110-20-490	Amended	25:24 VA.R. 4325	9/2/09
18 VAC 110-20-500	Amended	25:24 VA.R. 4327	9/2/09
18 VAC 110-20-520 through 18 VAC 110-20-555	Amended	25:24 VA.R. 4327-4331	9/2/09
18 VAC 110-20-535	Added	25:24 VA.R. 4328	9/2/09
18 VAC 110-20-536	Added	25:24 VA.R. 4328	9/2/09
18 VAC 110-20-570	Amended	25:24 VA.R. 4331	9/2/09
18 VAC 110-20-580	Amended	25:24 VA.R. 4332	9/2/09
18 VAC 110-20-590	Amended	25:24 VA.R. 4332	9/2/09
18 VAC 110-20-610	Amended	25:24 VA.R. 4333	9/2/09
18 VAC 110-20-620	Amended	25:24 VA.R. 4333	9/2/09
18 VAC 110-20-621	Amended	25:24 VA.R. 4333	9/2/09
18 VAC 110-20-622	Amended	25:24 VA.R. 4333	9/2/09
18 VAC 110-20-680 through 18 VAC 110-20-710	Amended	25:24 VA.R. 4333-4335	9/2/09
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 110-50-20 emer	Amended	25:3 VA.R. 466	9/23/08-9/22/09
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 115-20-100	Amended	25:22 VA.R. 4103	8/5/09
18 VAC 115-20-130	Amended	25:20 VA.R. 3704	7/23/09
18 VAC 115-30-110	Amended	25:22 VA.R. 4103	8/5/09
18 VAC 115-40-38	Amended	25:22 VA.R. 4103	8/5/09
18 VAC 115-50 (Forms)	Amended	25:24 VA.R. 4338	--
18 VAC 115-50-40	Amended	25:20 VA.R. 3706	7/23/09
18 VAC 115-50-40	Amended	25:24 VA.R. 4336	9/2/09
18 VAC 115-50-40	Erratum	25:25 VA.R. 4446	--
18 VAC 115-50-50	Erratum	25:25 VA.R. 4446	--
18 VAC 115-50-60	Amended	25:24 VA.R. 4336	9/2/09
18 VAC 115-50-90	Amended	25:22 VA.R. 4103	8/5/09
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 115-60-110	Amended	25:22 VA.R. 4104	8/5/09
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 (Forms)	Amended	25:24 VA.R. 4339	--
18 VAC 125-20-120	Amended	25:17 VA.R. 3026	7/1/09
18 VAC 125-20-121	Amended	25:24 VA.R. 4338	9/2/09
18 VAC 125-20-122	Amended	25:24 VA.R. 4339	9/2/09
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 150-20-30	Amended	25:25 VA.R. 4421	9/16/09
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



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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
<b>Title 19. Public Safety</b>			
19 VAC 30-200-10	Added	25:12 VA.R. 2272	4/2/09
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-314-10 through 20 VAC 5-314-170	Added	25:20 VA.R. 3716-3758	5/21/09
<b>Title 21. Securities and Retail Franchising</b>			
21 VAC 5-10-40	Amended	25:22 VA.R. 4106	7/1/09
21 VAC 5-20-60	Amended	25:22 VA.R. 4106	7/1/09
21 VAC 5-20-70	Amended	25:22 VA.R. 4107	7/1/09
21 VAC 5-20-90	Amended	25:22 VA.R. 4108	7/1/09
21 VAC 5-20-130	Amended	25:22 VA.R. 4108	7/1/09
21 VAC 5-20-135	Added	25:22 VA.R. 4108	7/1/09
21 VAC 5-20-150	Amended	25:22 VA.R. 4109	7/1/09
21 VAC 5-20-160	Amended	25:22 VA.R. 4109	7/1/09
21 VAC 5-30-80	Amended	25:22 VA.R. 4109	7/1/09
21 VAC 5-40-30	Amended	25:22 VA.R. 4110	7/1/09
21 VAC 5-45-20	Amended	25:22 VA.R. 4111	7/1/09
21 VAC 5-80-10	Amended	25:22 VA.R. 4112	7/1/09
21 VAC 5-80-70	Amended	25:22 VA.R. 4112	7/1/09
21 VAC 5-80-110	Amended	25:22 VA.R. 4113	7/1/09
21 VAC 5-80-130	Amended	25:22 VA.R. 4113	7/1/09
21 VAC 5-80-140	Repealed	25:22 VA.R. 4114	7/1/09
21 VAC 5-80-145	Added	25:22 VA.R. 4115	7/1/09
21 VAC 5-80-160	Amended	25:22 VA.R. 4119	7/1/09
21 VAC 5-110-10	Amended	25:22 VA.R. 4124	7/1/09
21 VAC 5-110-40	Amended	25:22 VA.R. 4125	7/1/09
21 VAC 5-110-50	Amended	25:22 VA.R. 4125	7/1/09
21 VAC 5-110-55	Amended	25:22 VA.R. 4126	7/1/09
21 VAC 5-110-65	Amended	25:22 VA.R. 4127	7/1/09
21 VAC 5-110-75	Amended	25:22 VA.R. 4128	7/1/09
21 VAC 5-110-80	Amended	25:22 VA.R. 4129	7/1/09
21 VAC 5-110-95	Amended	25:22 VA.R. 4130	7/1/09
<b>Title 22. Social Services</b>			
22 VAC 30-40-10 through 22 VAC 30-40-150	Amended	25:21 VA.R. 3973-3984	7/22/09
22 VAC 30-40-160	Added	25:21 VA.R. 3984	7/22/09
22 VAC 30-50-10	Amended	25:24 VA.R. 4340	9/3/09
22 VAC 30-50-20	Amended	25:24 VA.R. 4340	9/3/09
22 VAC 30-50-30	Amended	25:24 VA.R. 4340	9/3/09
22 VAC 30-50-50	Amended	25:24 VA.R. 4340	9/3/09
22 VAC 30-50-60	Amended	25:24 VA.R. 4341	9/3/09
22 VAC 30-50-70	Amended	25:24 VA.R. 4341	9/3/09
22 VAC 30-50-80	Amended	25:24 VA.R. 4341	9/3/09
22 VAC 30-50-90	Amended	25:24 VA.R. 4341	9/3/09
22 VAC 30-50-100	Amended	25:24 VA.R. 4342	9/3/09

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 30-50-110	Amended	25:24 VA.R. 4342	9/3/09
22 VAC 30-50-120	Added	25:24 VA.R. 4343	9/3/09
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	Amended	25:23 VA.R. 4236	8/19/09
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 40-41-10	Amended	25:23 VA.R. 4236	9/1/09
22 VAC 40-41-20	Amended	25:23 VA.R. 4237	9/1/09
22 VAC 40-41-40	Amended	25:23 VA.R. 4238	9/1/09
22 VAC 40-41-50	Amended	25:23 VA.R. 4238	9/1/09
22 VAC 40-41-55	Erratum	25:25 VA.R. 4447	--
22 VAC 40-41-55	Amended	25:23 VA.R. 4239	9/1/09
22 VAC 40-41-60	Amended	25:23 VA.R. 4239	9/1/09
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
22 VAC 40-211-10 through 22 VAC 40-211-110	Added	25:24 VA.R. 4343-4351	9/2/09
22 VAC 40-410-10	Repealed	25:23 VA.R. 4239	9/1/09
22 VAC 40-410-20	Repealed	25:23 VA.R. 4239	9/1/09
22 VAC 40-411-10 through 22 VAC 40-411-220	Added	25:23 VA.R. 4239-4245	9/1/09
22 VAC 40-570-10 through 22 VAC 40-570-100	Repealed	25:23 VA.R. 4239	9/1/09
22 VAC 40-640-10 through 22 VAC 40-640-80	Repealed	25:23 VA.R. 4239	9/1/09
22 VAC 40-670-10	Amended	25:21 VA.R. 3988	8/6/09
22 VAC 40-670-20	Amended	25:21 VA.R. 3988	8/6/09
22 VAC 40-675-10	Amended	25:21 VA.R. 3990	8/6/09
22 VAC 40-675-60 through 22 VAC 40-675-100	Amended	25:21 VA.R. 3990-3991	8/6/09
22 VAC 40-740-10	Amended	25:23 VA.R. 4248	9/1/09
22 VAC 40-740-15	Amended	25:23 VA.R. 4250	9/1/09
22 VAC 40-740-50	Amended	25:23 VA.R. 4250	9/1/09
<b>Title 23. Taxation</b>			
23 VAC 10-210-310	Amended	25:22 VA.R. 4155	9/19/09
<b>Title 24. Transportation and Motor Vehicles</b>			
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

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider repealing the following regulations: **2VAC5-540, Rules and Regulations Pertaining to Carbonated and Still Water Bottling Plants and Beverages**. The purpose of the proposed action is to repeal the regulation as the essential elements of the regulation have already been incorporated into the Virginia Food Laws (Chapter 52 (§ 3.2-5200 et seq.) of Title 3.2 of the Code of Virginia).

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

Statutory Authority: §§ 3.2-5101 and 3.2-5121 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on September 30, 2009.

Agency Contact: James A. Morano, Review and Compliance Officer, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3520, FAX (804) 371-7792, TTY (800) 828-1120, or email james.morano@vdacs.virginia.gov.

VA.R. Doc. No. R09-2088; Filed August 10, 2009, 8:52 a.m.

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## TITLE 9. ENVIRONMENT

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Environmental Quality intends to consider promulgating the following regulations: **9VAC15-40, Small Renewable Energy Projects (Wind) Permit Regulation**. The purpose of the proposed action is to implement new state legislation requiring the Department of Environmental Quality to develop one or more permits-by-rule for wind-energy projects with rated capacity not exceeding 100 megawatts. By means of this legislation, the General Assembly moved permitting authority for these projects from the State Corporation Commission to the Department of Environmental Quality. By requiring a "permit-by-rule," the legislature is mandating that permit requirements be set forth "up front" within this regulation, rather than being developed on a case-by-case basis. The legislature mandates that the permit-by-rule

include conditions and standards necessary to protect the Commonwealth's natural resources.

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

Statutory Authority: § 10.1-1197.6 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on September 30, 2009.

Agency Contact: Carol C. Wampler, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4579, FAX (804) 698-4346, or email carol.wampler.renewable.energy@gmail.com.

VA.R. Doc. No. R09-2090; Filed August 11, 2009, 12:32 p.m.

## STATE WATER CONTROL BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending the following regulations: **9VAC25-720, Water Quality Management Planning Regulation**. The purpose of the proposed action is to amend the Water Quality Management Planning Regulation to include the concept of regulating flow or other qualities of a point source that cause or contribute to pollutants or pollution downstream of point sources.

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

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

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

Agency Contact: Arthur Butt, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4314, FAX (804) 698-4116, or email arthur.butt@deq.virginia.gov.

VA.R. Doc. No. R09-2001; Filed August 11, 2009, 2:53 p.m.

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## TITLE 11. GAMING

### CHARITABLE GAMING BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Charitable Gaming Board intends to consider amending the following regulations: **11VAC15-31, Supplier Regulations**. The purpose of the proposed action is to amend the regulation as it is impacted

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# Notices of Intended Regulatory Action

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by the implementation of electronic games of chance systems. This action is pursuant to Chapter 264 of the 2007 Acts of Assembly.

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

Statutory Authority: §§ 2.2-2456, 18.2-340.19, and 18.2-340.34 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on September 30, 2009.

Agency Contact: Betty Bowman, Division Director, Department of Agriculture and Consumer Services, James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, VA 23219, telephone (804) 786-3015, FAX (804) 786-1079, or email [betty.bowman@dca.virginia.gov](mailto:betty.bowman@dca.virginia.gov).

VA.R. Doc. No. R09-2014; Filed August 10, 2009, 8:43 a.m.



## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider promulgating the following regulations: **12VAC5-115, Virginia Immunization Information System Regulations**. The purpose of the proposed action is to establish a system that will contain birth to death immunization histories of participants.

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

Statutory Authority: § 32.1-46.01 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on September 30, 2009.

Agency Contact: James Farrell, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8055, or email [james.farrell@vdh.virginia.gov](mailto:james.farrell@vdh.virginia.gov).

VA.R. Doc. No. R09-1776; Filed August 11, 2009, 11:03 a.m.

### STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Behavioral Health and Developmental Services intends to consider amending the following regulations: **12VAC35-115, 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.** The purpose of the proposed action is to clarify that individuals receiving services have the right and opportunity to notify a person of his choice of his (i) location, (ii) general condition, and (iii) transfer to another facility.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on September 30, 2009.

Agency Contact: Margaret Walsh, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 13th Floor, Richmond, VA 23219, telephone (804) 786-2008, FAX (804) 371-2308, or email [margaret.walsh@co.dmhmr.sas.virginia.gov](mailto:margaret.walsh@co.dmhmr.sas.virginia.gov).

VA.R. Doc. No. R09-2085; Filed August 6, 2009, 11:15 a.m.



## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### AUCTIONEERS BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Auctioneers Board intends to consider amending the following regulations: **18VAC25-21, Regulations of the Virginia Auctioneers Board**. The purpose of the proposed action is to amend the existing regulations dealing with disciplinary actions and the compliance of such actions and for further clarification of the regulation.

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

Statutory Authority: §§ 54.1-201 and 54.1-602 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on September 30, 2009.

Agency Contact: Marian H. Brooks, Regulatory Board Administrator, Auctioneers Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email [auctioneers@dpor.virginia.gov](mailto:auctioneers@dpor.virginia.gov).

VA.R. Doc. No. R09-2002; Filed August 10, 2009, 10:31 a.m.



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# Notices of Intended Regulatory Action

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## TITLE 22. SOCIAL SERVICES

### CHILD DAY-CARE COUNCIL

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Child Day-Care Council intends to consider repealing **22VAC15-30, Standards for Licensed Child Day Centers** and promulgating **22VAC15-31, Standards for Licensed Child Day Centers**. The purpose of the proposed action is to adopt a new regulation to improve clarity and consistency, relieve intrusive and burdensome language, and provide greater protection for children in care.

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

Statutory Authority: §§ 63.2-1734 and 63.2-1735 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on September 30, 2009.

Agency Contact: Debra O'Neill, Children's Program Licensing Consultant, Department of Social Services, Division of Licensing Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7648, FAX (804) 726-7132, TTY (800) 828-1120, or email [debra.oneill@dss.virginia.gov](mailto:debra.oneill@dss.virginia.gov).

VA.R. Doc. No. R09-2086; Filed August 6, 2009, 1:59 p.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Final Regulation

**REGISTRAR'S NOTICE:** The Board of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 3.2-703 of the Code of Virginia, which exempts quarantine to prevent or retard the spread of a pest into, within, or from the Commonwealth, and § 3.2-704 of the Code of Virginia, which provides that the Board of Agriculture and Consumer Services shall prohibit the importation of any regulated article from any locality of other states, territories, or countries, into the Commonwealth.

**Title of Regulation:** **2VAC5-315. Virginia Imported Fire Ant Quarantine for Enforcement of the Virginia Pest Law (adding 2VAC5-315-10, 2VAC5-315-20, 2VAC5-315-30, 2VAC5-315-40, 2VAC5-315-50, 2VAC5-315-60, 2VAC5-315-70, 2VAC5-315-80, 2VAC5-315-90, 2VAC5-315-100, 2VAC5-315-110, 2VAC5-315-120, 2VAC5-315-130).**

**Statutory Authority:** §§ 3.2-703 and 3.2-704 of the Code of Virginia.

**Effective Date:** August 31, 2009.

**Agency Contact:** Frank Fulgham, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-0440, FAX (804) 371-7793, TTY (800) 828-1120, or email frank.fulgham@vdacs.virginia.gov.

#### **Summary:**

*This action establishes regulated areas under the Virginia Imported Fire Ant Quarantine due to the detection of permanently established and naturally spreading colonies of imported fire ants in the cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, as well as the counties of James City and York. The quarantine restricts the movement of regulated articles from regulated localities to nonregulated localities. The regulated articles, which include soil, plants with roots and soil attached, grass sod, used farm equipment and soil-moving equipment, honey bee hives and logs, pulpwood, and stumpwood with soil attached, as well as hay, straw, and pine straw that has been stored on the ground, pose a significant risk of transporting imported fire ants. These regulated articles*

*may move freely within the regulated areas. The state quarantine is necessary to prevent the United States Department of Agriculture from imposing a federal quarantine regulating the entire state of Virginia. It is currently anticipated that a federal quarantine covering only Virginia's regulated localities will be implemented to prevent the spread of this pest from Virginia to noninfested states.*

#### CHAPTER 315

#### VIRGINIA IMPORTED FIRE ANT QUARANTINE FOR ENFORCEMENT OF THE VIRGINIA PEST LAW

#### **2VAC5-315-10. Declaration of quarantine.**

A quarantine is hereby established to restrict the movement of certain articles capable of transporting the imported fire ant into unregulated areas of the state unless such articles comply with the conditions specified herein.

#### **2VAC5-315-20. Purpose of quarantine.**

The imported fire ant is an introduced species that is notorious for its aggressive behavior, ferocious sting, and the damage it causes to several agricultural commodities. The imported fire ant has become established in portions of the Commonwealth, and has the potential to spread to uninfested areas by natural means or through the movement of infested articles. The purpose of this quarantine is to prevent the artificial spread of the imported fire ant to uninfested areas of the state by regulating the movement of those articles that pose a significant threat of transporting the imported fire ant.

#### **2VAC5-315-30. Definitions.**

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Certificate" means a document issued by an inspector or person operating in accordance with a compliance agreement to allow the movement of regulated articles to any destination.

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services.

"Compliance agreement" means a written agreement between a person engaged in growing, handling, receiving, or moving regulated articles and the Virginia Department of Agriculture and Consumer Services, the United States Department of Agriculture, or both, wherein the former

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agrees to comply with the requirements of the compliance agreement and comply with the provisions of this regulation.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Imported fire ant" means the live insect, in any life stage, known as the imported fire ant, *Solenopsis invicta* Buren (commonly known as Red Imported Fire Ant) and *Solenopsis richteri* Forel (commonly known as Black Imported Fire Ant), and hybrids of these species.

"Infestation" means the presence of the imported fire ant or the existence of circumstances that make it reasonable to believe that the imported fire ant is present.

"Inspector" means an employee of the Virginia Department of Agriculture and Consumer Services or other person authorized by the Commissioner of the Virginia Department of Agriculture and Consumer Services to enforce the provisions of this quarantine or regulation.

"Limited permit" or "permit" means a document issued by an inspector to allow the movement of regulated articles to a specific destination.

"Moved," "move," or "movement" means shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

"Noncompacted soil" means soil that can be removed from an article by brisk brushing or washing.

"Person" means the term as defined in § 1-230 of the Code of Virginia.

"Regulated area" means the locality or area listed in 2VAC5-315-50 of this quarantine.

"Soil" means, for the purpose of this regulation, any nonliquid combination of organic or inorganic material, or both, in which plants can grow.

"Soil-moving equipment" means any equipment used for moving or transporting soil, including, but not limited to, bulldozers, backhoes, dump trucks, or road scrapers.

"Virginia Pest Law" means the statute set forth in Chapter 7 (§ 3.2-700 et seq.) of Title 3.2 of the Code of Virginia.

## **2VAC5-315-40. Regulated articles.**

The following articles are regulated under the provisions of this quarantine and shall not be moved out of any regulated area in Virginia, except in compliance with the conditions prescribed in this quarantine:

1. Any life stage of imported fire ant.
2. Soil, except potting soil that is shipped in original containers after commercial preparation, and soil samples shipped to approved laboratories.

3. Plants with roots with soil attached, or roots and rhizomes of plants with soil attached, except plants maintained indoors in a home or office environment and not for sale.

4. Grass sod.

5. Used soil-moving equipment unless free of all noncompacted soil.

6. Used farm equipment unless free of all noncompacted soil.

7. Hay and straw, including pine straw, that has been stored in direct contact with the ground.

8. Honey bee hives that have been in direct contact with the ground, including hive stands containing soil.

9. Logs, pulpwood and stump wood with soil attached.

10. Any other article or means of conveyance when it is determined by an inspector that it presents a risk of spread of the imported fire ant.

## **2VAC5-315-50. Regulated areas.**

The following areas in Virginia are quarantined for imported fire ant:

The entire counties of:

James City  
York

The entire cities of:

Chesapeake  
Hampton  
Newport News  
Norfolk  
Poquoson  
Portsmouth  
Suffolk  
Virginia Beach  
Williamsburg

## **2VAC5-315-60. Conditions governing the intrastate movement of regulated articles.**

A. Movement within regulated areas - movement of a regulated article solely within the quarantined areas is allowed without restriction.

B. Movement from regulated areas to nonregulated areas - movement of a regulated article that originates from within the quarantined areas to an area outside of the quarantined areas is allowed only if the regulated article is accompanied

by a certificate or limited permit issued in accordance with 2VAC5-315-70 and attached in accordance with 2VAC5-315-100.

C. Movement from nonregulated areas through regulated areas - regulated articles that originate outside of the quarantined areas may move through the quarantined areas under the following conditions:

1. With a certificate or limited permit issued in accordance with 2VAC5-315-70 and attached in accordance with 2VAC5-315-100, or

2. Without a certificate or limited permit if:

a. Accompanied by a waybill that indicates the point of origin of the regulated article;

b. The regulated article is moved directly through the regulated area without stopping, except for refueling or due to traffic conditions; or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by the imported fire ant; and

c. The regulated article has not been combined or commingled with other articles so as to lose its individual identity.

D. Movement from regulated areas through nonregulated areas - regulated articles that originate from within the quarantined areas may travel through the nonquarantined areas to a destination that is quarantined under the following conditions:

1. With a certificate or limited permit issued in accordance with 2VAC5-315-70 and attached in accordance with 2VAC5-315-100, or

2. Without a certificate or limited permit if:

a. Accompanied by a waybill that indicates the point of origin of the regulated article;

b. The regulated article is moved directly through the nonregulated area without stopping, except for refueling or due to traffic conditions; or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by the imported fire ant; and

c. The regulated article has not been combined or commingled with other articles so as to lose its individual identity.

## **2VAC5-315-70. Issuance and cancellation of certificates and limited permits.**

A. Certificates and limited permits may be issued by an inspector for the movement of regulated articles to any destination within Virginia when:

1. The regulated articles have been examined by the inspector and found to be apparently free of the imported fire ant;

2. The regulated articles have been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, would prevent an infestation or destroy all life stages of imported fire ant;

3. The regulated articles are to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the imported fire ant; and

4. The regulated articles are eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated articles.

B. Certificates may be issued by any person operating under a compliance agreement for the movement of regulated articles to any destination within Virginia when:

1. The regulated articles have been examined by any person operating under a compliance agreement and found to be apparently free of the imported fire ant;

2. The regulated articles have been grown, produced, manufactured, stored, or handled in such a manner, and following all requirements of the compliance agreement, that would prevent an infestation or destroy all life stages of imported fire ant;

3. The regulated articles are to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the imported fire ant; and

4. The regulated articles are eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated articles.

C. Any certificate or limited permit that has been issued or authorized may be withdrawn by the inspector orally or in writing if the inspector determines that the holder of the certificate or limited permit has not complied with all conditions for the use of the certificate or limited permit or with any applicable compliance agreement. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing and communicated to the certificate or limited permit holder as promptly as circumstances allow.

## **2VAC5-315-80. Compliance agreements and cancellation.**

A. Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands that person's requirements and obligations under this quarantine. The agreement shall stipulate safeguards that must be maintained against the establishment and spread of imported fire ants and the conditions governing the movement of regulated articles.

B. Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the



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person who has entered into the compliance agreement has failed to comply with this quarantine. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing and communicated to the person who entered into such compliance agreement as promptly as circumstances allow.

## **2VAC5-315-90. Assembly and inspection of regulated articles.**

A. Any person, other than a person authorized to issue certificates under 2VAC5-315-70, who desires to move a regulated article intrastate and is seeking a certificate or limited permit shall apply for inspection of the regulated article as far in advance as practical, but no less than five business days before the regulated articles are to be moved.

B. The regulated articles must be assembled at the place and in the manner the inspector designates as necessary to facilitate inspection and shall be safeguarded from infestation.

## **2VAC5-315-100. Attachment and disposition of certificates and limited permits.**

A. During the intrastate movement, a certificate or limited permit must be attached at all times to the outside of the container that contains the regulated article or to the regulated article itself. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to facilitate the identification of the regulated article.

B. The certificate or the limited permit for the intrastate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article. A copy of the certificate or the limited permit must be retained by the sender of the regulated article at the place of shipment.

## **2VAC5-315-110. Inspection and disposal of regulated articles and pests.**

Upon presentation of official credentials, an inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of or require disposal of regulated articles as provided in the Virginia Pest Law.

## **2VAC5-315-120. Nonliability of the department.**

The department shall not be liable for any costs incurred by third parties whose costs result from, or are incidental to, inspections required under the provisions of the quarantine.

## **2VAC5-315-130. Revocation of this regulation.**

This regulation may be revoked by the board when such party is satisfied that the need for this quarantine no longer exists. Such revocation shall take place upon the date

specified by the board in the order that revokes this regulation.

VA.R. Doc. No. R09-2052; Filed August 11, 2009, 2:07 p.m.

## **Forms**

**NOTICE:** The following forms have been filed by the Board of Agriculture and Consumer Services. The forms are available for public inspection at the Department of Agriculture and Consumer Services, 102 Governor Street, Room 321, Richmond, VA 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Richard D. Saunders, Deputy Director, Division of Animal and Food Industry Services, telephone (804) 692-0601, or email [doug.saunders@vdacs.virginia.gov](mailto:doug.saunders@vdacs.virginia.gov).

### **Title of Regulation: 2VAC5-620. Regulations Pertaining to the Establishment of the Dangerous Dog Registry.**

#### **FORMS (2VAC5-620)**

Dangerous Dog Verification of Compliance and Registration Form, VDACS-DDR-01 (~~eff. 07/07~~) (eff. 07/09).

Dangerous Dog Verification of Compliance and Registration Supplemental Owner Information Form, VDACS-DDR-02 (~~eff. 07/07~~) (eff. 07/09).

Dangerous Dog Renewal Registration Form, VDACS-DDR-03 (~~eff. 07/07~~) (eff. 07/09).

Dangerous Dog Registration Change of Address Form, VDACS-DDR-04 (~~eff. 07/07~~) (eff. 07/09).

Dangerous Dog Registration Change of Address Supplemental Owner Information Form, VDACS-DDR-05 (~~eff. 07/07~~) (eff. 07/09).

Dangerous Dog Registration Remittance Form, VDACS-DDR-06 (~~eff. 07/07~~) (eff. 07/09).

VA.R. Doc. No. R09-2082; Filed August 11, 2009, 10:17 a.m.



## **TITLE 4. CONSERVATION AND NATURAL RESOURCES**

### **DEPARTMENT OF MINES, MINERALS AND ENERGY**

#### **Proposed Regulation**

**Title of Regulation: 4VAC25-150. Virginia Gas and Oil Regulation (amending 4VAC25-150-10, 4VAC25-150-60, 4VAC25-150-80, 4VAC25-150-90, 4VAC25-150-100, 4VAC25-150-110, 4VAC25-150-120, 4VAC25-150-135, 4VAC25-150-140, 4VAC25-150-150, 4VAC25-150-160, 4VAC25-150-180, 4VAC25-150-190, 4VAC25-150-200, 4VAC25-150-210, 4VAC25-150-220, 4VAC25-150-230, 4VAC25-150-240, 4VAC25-150-250, 4VAC25-150-260,**

4VAC25-150-280, 4VAC25-150-300, 4VAC25-150-310,  
4VAC25-150-340, 4VAC25-150-360, 4VAC25-150-380,  
4VAC25-150-390, 4VAC25-150-420, 4VAC25-150-460,  
4VAC25-150-490, 4VAC25-150-500, 4VAC25-150-510,  
4VAC25-150-520, 4VAC25-150-530, 4VAC25-150-550,  
4VAC25-150-560, 4VAC25-150-590, 4VAC25-150-600,  
4VAC25-150-610, 4VAC25-150-620, 4VAC25-150-630,  
4VAC25-150-650, 4VAC25-150-660, 4VAC25-150-670,  
4VAC25-150-680, 4VAC25-150-690, 4VAC25-150-700,  
4VAC25-150-711, 4VAC25-150-720, 4VAC25-150-730,  
4VAC25-150-740, 4VAC25-150-750).

Statutory Authority: §§ 45.1-161.3 and 45.1-361.27 of the Code of Virginia.

Public Hearing Information:

October 23, 2009 - 1 p.m. - Department of Mines, Minerals and Energy, 3405 Mountain Empire Road, Buchanan-Smith Building, Conference Room 219, Big Stone Gap, VA

Public Comments: Public comments may be submitted until 5 p.m. on October 30, 2009.

Agency Contact: Tabitha Hibbitts Peace, Policy Analyst, Department of Mines, Minerals and Energy, 3405 Mountain Empire Road, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (276) 523-8212, FAX (276) 523-8148, TTY (800) 828-1120, or email tabitha.peace@dmme.virginia.gov.

Basis: The Department of Mines, Minerals and Energy (DMME) has authority to promulgate this regulation under the authority found in §§ 45.1-161.3 and 45.1-361.27 of the Code of Virginia.

Section 45.1-161.3 of the Code of Virginia empowers DMME, with the approval of the director, to promulgate regulations necessary or incidental to the performance of duties or execution of powers under Title 45.1 of the Code of Virginia.

Section 45.1-361.27 of the Code of Virginia empowers the director to promulgate and enforce rules, regulations, and orders necessary to ensure the safe and efficient development and production of gas and oil resources located in the Commonwealth.

Purpose: The Department of Mines, Minerals and Energy has determined the proposed regulatory amendments to various sections of 4VAC25-150 are necessary to protect the health, welfare, and safety of citizens, reduce workload, and increase efficiency for permit applicants. Technical corrections are necessary for accuracy and to provide clear language consistent with state law. These amendments will aid the gas and oil industry and the Virginia Gas and Oil Board in the approval and regulation of gas and oil permits.

Substance: As a result of periodic review, the Department of Mines, Minerals and Energy is amending 4VAC25-150,

Virginia Gas and Oil Regulation. Sections of 4VAC25-150 will be amended to correct technical areas for accuracy, improve worker safety, and provide clarity. These amendments will aid the gas and oil industry and the Gas and Oil Board in the review and regulation of gas and oil permits.

Amending parts of 4VAC25-150-150 will reduce workload and increase efficiency for applicants by providing flexibility and economy to the permit process. 4VAC25-150-90 will be updated to include symbols that are consistent with current industry usage and available CAD technology.

Amendments to 4VAC25-150-80, 4VAC25-150-260, 4VAC25-150-300, 4VAC25-150-380, and 4VAC25-150-630 will protect the safety and health of oil and gas industry employees.

An amendment to 4VAC25-150-90 is being made to bring consistency to data submission requirements for the Division of Gas and Oil. The use of latitude and longitude and the Virginia Coordinate System of 1927 have been replaced by the Virginia Coordinate System of 1983 in other Division of Gas and Oil regulations. Current industry practice to use the more modern 1983 coordinate system for describing the locations of wells and core holes. Applicants for permits under this chapter must currently convert their coordinates back to the 1927 system, as required by the regulation, in order to submit them to the Department of Mines, Minerals and Energy's Division of Gas and Oil. The amendment will allow applicants to use the updated 1983 coordinate system.

Issues: These regulatory actions are expected to provide technical corrections, improve clarity, increase efficiency, and to restore consistency with other chapters of regulation. These amendments regarding process will aid the gas and oil industry, as well as the Gas and Oil Board in the review and regulation of gas and oil permits. Reduced workload and increased efficiency for applicants will occur by providing flexibility and economy in the permit process.

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

Summary of the Proposed Amendments to Regulation. As a result of periodic review, the Department of Mines, Minerals and Energy (DMME) proposes numerous amendments to the Virginia Gas & Oil Regulations, including: 1) adding a definition for "red zone," 2) updating required symbols to the current industry standard CAD template, 3) adding a requirement that operations plan specify "red zone" areas, 4) increasing the application fee for transfer of permit rights from \$65 to \$75, 5) eliminating the requirement to mail permit approvals to all persons given notice of the hearing, but maintaining the requirement to mail permit denials to all persons given notice of the hearing, 6) extending reporting deadlines from 30 or 45 days to 90 days, 7) changing required notification of ground-disturbing activity from at least two working days prior to commencing ground-disturbing activity

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to at least 48 hours prior, 8) adding requirement for posting red zone signs, 9) reduce specificity of topsoil requirement so that any soil suitable for stabilizing the site with vegetation can be used, 10) allowing any form of variance request, 11) changing the specific circumstances under which an inclination survey must be performed, 12) adding a requirement that all pits be reclaimed within 90 days unless a variance is granted by the field inspector, and 13) adding a new section defining the length of time wells can remain shut in without a requirement for plugging.

**Result of Analysis.** The benefits exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

**Estimated Economic Impact.** DMME proposes several amendments to these regulations merely reflect modern usage such as GPS, electronic communication, and the use of the current industry standard CAD template. Virginia's gas and oil industry through the representation of the Virginia Gas and Oil Association (VGOA) has expressed approval of these changes and generally agrees that these types of changes are beneficial.

The proposed regulations define "red zone" as a zone in or contiguous to a permitted area that could have potential hazards to workers or to the public. Further, the proposed regulations require that operation plans identify red zone areas and that red zone signs be posted to alert the public and workers of the hazards in the area. VGOA estimates that this proposed requirement will add \$1,000 to \$2,000 of cost per plan and approximately \$100 per sign, but agrees that it will potentially significantly reduce safety risks. Thus, these proposed changes likely produce a net benefit.

DMME proposes to increase the application fee for transfer of permit rights from \$65 to \$75. According to the agency even the proposed higher fee falls far short of covering their regulating expenses. VGOA does not oppose the fee increase.

Under the current regulations, in hearings on objections to permit applications the DMME director must mail his decision to all parties given notice of the hearing. DMME proposes to eliminate the requirement to mail permit approvals to all persons given notice of the hearing, but to continue to require that permit denials be sent to all persons given notice of the hearing. Parties directly involved would still be notified of permit approvals of course. The proposed change would reduce some small costs in time for DMME staff, but it is unclear whether the small reduction in time cost exceeds the reduced benefit in informing interested members of the public.

The current regulations include various reporting deadlines of either 30 days or 45 days which DMME proposes to extend to 90 days. The extra time will be beneficial for firms and DMME states that the extra time for reporting is unlikely to

significantly affect health and safety. Thus, these proposed longer deadlines will likely produce a net benefit.

The agency proposes to change the required notification of ground-disturbing activity from at least two working days prior to commencing ground-disturbing activity to at least 48 hours prior. According to DMME, staff is available to receive notification on the weekends and 48 hours notice is sufficient to ensure safety. This proposed change allows firms to not have to proceed with work one or two days sooner at times without negatively affected safety. Consequently, this proposed change produces a net benefit for the Commonwealth.

DMME also proposes some additional options for satisfying requirements that will reduce costs for firms without compromising safety or the environment. Under the current regulations during construction topsoil sufficient to provide a suitable growth medium for permanent stabilization with vegetation must be used to stabilize the site. The agency proposes to permit the use of soil that is not necessarily topsoil, but which still can provide a suitable growth medium for permanent stabilization with vegetation. Also the timing for acceptance of variances is less restrictive under the proposed regulations.

The current regulations require that an inclination survey be performed prior to drilling into a coal seam where active mining is being conducted. DMME proposes to instead require that an inclination survey be performed prior to drilling within 500 feet of a coal seam where workers are assigned travel, etc. According to DMME their definition of active mining includes where coal workers are not currently working; and thus under the proposed language there will be fewer instances where inclination surveys are required. VGOA estimates that inclination surveys cost \$2,000 to \$3,000 per well. Since only instances where coal workers are not present will be eliminated from when an inclination survey is required, the proposed change should not negatively affect safety while saving \$2,000 to \$3,000 per instance where the inclination survey is no longer required.

The regulations state that "Pits are to be temporary in nature and are to be reclaimed when the operations using the pit are complete. DMME proposes to add that "All pits shall be reclaimed within 90 days unless a variance is granted by the field inspector." Reclamation concerns meeting water quality standards. According to VGOA, mandatory reclamation within 90 days can significantly add to costs. VGOA states that drought conditions can cause pits to not meet water quality standards that would meet the standards under non-drought conditions, causing firms to spend thousands of dollars which they could have avoided if they were not required to act within 90 days. The counter argument would be that there are environmental costs to the pits not meeting water quality standards and perhaps the benefits of improved environment are worth those costs.

Abandoned wells are required to be plugged to prevent environmental damage and safety risks from leaks. DMME proposes to require that permittees submit either a well plugging plan or a future well production plan for wells that have been in non-producing status for two years. Further, the agency proposes that "In no circumstance shall a non-producing well remain un-plugged for more than a three year period unless approved by the director (of DMME)." The intent of this proposal is to limit the existence of non-producing wells that may be producing environmental damage through leaks.

The proposed plugging requirement may produce large costs and could discourage natural gas production. According to VGOA it costs approximately \$20,000 to plug a well, and from \$350,000 to \$500,000 to drill a new well. VGOA states that it is essentially not feasible to unplug a plugged well, and thus would cost another \$350,000 to \$500,000 to re-drill a well at the site of a plugged well. The proposed plugging requirement would discourage some natural gas production (according to VGOA) in that the time frame that a well could be used would be reduced and thus the potential benefits of drilling in new locations would be reduced. Thus it is not clear that the potential environmental benefits of requiring plugging within three years would exceed the costs.

**Businesses and Entities Affected.** According to the Department of Mines, Minerals and Energy, four companies drill most oil and gas wells in Virginia and an unknown number of other companies may also undertake such activities from time to time. None of these would be defined as small businesses.

**Localities Particularly Affected.** The proposed regulations particularly affect the City of Norton and the following counties: Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, Washington and Wise.

**Projected Impact on Employment.** Most of the proposed amendments would not significantly affect employment. The proposal to require plugging for wells not used for three years might discourage some natural gas drilling and might have some negative impact on employment.

**Effects on the Use and Value of Private Property.** Several of the proposed amendments add moderate costs for oil and gas firms in order to improve public safety and the environment. These changes may have some moderate positive affect on the value of neighboring properties. Some of the proposed amendments reduce costs for firms without compromising safety or the environment. These changes will provide some counterbalance to the aforementioned increased costs. The proposal to requiring plugging for wells not in use for three years may produce larger costs for private firms.

**Small Businesses: Costs and Other Effects.** According to DMME, none of the firms directly affected by the proposed

regulations are small businesses. Small businesses that serve the large firms may be indirectly affected.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** According to DMME, none of the firms directly affected by the proposed regulations are small businesses.

**Real Estate Development Costs.** This regulation concerns the use of land for gas and oil acquisition. Several proposed changes that increase public safety or reduce environmental risk, such as requiring red zone signs, add moderate costs. Some proposed changes, such as permitting the use of soil that is not necessarily topsoil, but which still can provide a suitable growth medium for permanent stabilization with vegetation, moderately reduce land use 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 Department of Planning and Budget's economic impact analysis.

Summary:

*As a result of periodic review, the Department of Mines, Minerals and Energy is amending 4VAC25-150, Virginia Gas and Oil Regulation. Sections within 4VAC25-150 will be amended to correct technical areas for accuracy, improve worker safety, and provide clarity. These amendments will aid the gas and oil industry and the Gas and Oil Board in the review and regulation of gas and oil*

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*permits. Amending 4VAC25-150-150 will reduce workload and increase efficiency for applicants by providing flexibility and economy to the permit process. 4VAC25-150-90 will be updated to include symbols that are consistent with current industry usage and available CAD technology. Amendments to 4VAC25-150-80, 4VAC25-150-260, 4VAC25-150-300, 4VAC25-150-380, and 4VAC25-150-630 will protect the safety and health of oil and gas industry employees. An amendment to 4VAC25-150-90 is being made to bring consistency to data submission requirements for the Division of Gas and Oil.*

## Part I Standards of General Applicability

### Article 1 General Information

#### **4VAC25-150-10. Definitions.**

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

"Act" means the Virginia Gas and Oil Act of 1990, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia.

"Adequate channel" means a watercourse that will convey the designated frequency storm event without overtopping its banks or causing erosive damage to the bed, banks and overbank sections.

"Applicant" means any person or business who files an application with the Division of Gas and Oil.

"Approved" means accepted as suitable for its intended purpose when included in a permit issued by the director or determined to be suitable in writing by the director.

"Berm" means a ridge of soil or other material constructed along an active earthen fill to divert runoff away from the unprotected slope of the fill to a stabilized outlet or sediment trapping facility.

"Board" means the Virginia Gas and Oil Board.

"Bridge plug" means an obstruction intentionally placed in a well at a specified depth.

"Cased completion" means a technique used to make a well capable of production in which production casing is set through the productive zones.

"Cased/open hole completion" means a technique used to make a well capable of production in which at least one zone is completed through casing and at least one zone is completed open hole.

"Casing" means all pipe set in wells except conductor pipe and tubing.

"Causeway" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"Cement" means hydraulic cement properly mixed with water.

"Channel" means a natural stream or man-made waterway.

"Chief" means the Chief of the Division of Mines of the Department of Mines, Minerals and Energy.

"Coal-protection string" means a casing designed to protect a coal seam by excluding all fluids, oil, gas or gas pressure from the seam, except such as may be found in the coal seam itself.

"Cofferdam" means a temporary structure in a river, lake or other waterway for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, pipelines, etc., may be constructed.

"Completion" means the process which results in a well being capable of producing gas or oil.

"Conductor pipe" means the short, large diameter string used primarily to control caving and washing out of unconsolidated surface formations.

"Corehole" means any shaft or hole sunk, drilled, bored or dug, that breaks or disturbs the surface of the earth as part of a geophysical operation solely for the purpose of obtaining rock samples or other information to be used in the exploration for coal, gas, or oil. The term shall not include a borehole used solely for the placement of an explosive charge or other energy source for generating seismic waves.

"Days" means calendar days.

"Denuded area" means land that has been cleared of vegetative cover.

"Department" means the Department of Mines, Minerals and Energy.

"Detention basin" means a stormwater management facility which temporarily impounds and discharges runoff through an outlet to a downstream channel. Infiltration is negligible when compared to the outlet structure discharge rates. The facility is normally dry during periods of no rainfall.

"Dike" means an earthen embankment constructed to confine or control fluids.

"Directional survey" means a well survey that measures the degree of deviation of a hole, or distance from the vertical and the direction of deviation from true vertical, and the distance and direction of points in the hole from vertical.

"Director" means the Director of the Department of Mines, Minerals and Energy or his authorized agent.

"Diversion" means a channel constructed for the purpose of intercepting surface runoff.

"Diverter" or "diverter system" means an assembly of valves and piping attached to a gas or oil well's casing for controlling flow and pressure from a well.

"Division" means the Division of Gas and Oil of the Department of Mines, Minerals and Energy.

"Erosion and sediment control plan" means a document containing a description of materials and methods to be used for the conservation of soil and the protection of water resources in or on a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain a record of all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Expanding cement" means any cement approved by the director which expands during the hardening process, including but not limited to regular oil field cements with the proper additives.

"Form prescribed by the director" means a form issued by the division, or an equivalent facsimile, for use in meeting the requirements of the Act or this chapter.

"Firewall" means an earthen dike or fire resistant structure built around a tank or tank battery to contain the oil in the event a tank ruptures or catches fire.

"Flume" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

"Flyrock" means any material propelled by a blast that would be actually or potentially hazardous to persons or property.

"Gas well" means any well which produces or appears capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"Gob well" means a coalbed methane gas well which is capable of producing coalbed methane gas from the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coal seam.

"Groundwater" means all water under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, which has the potential for being used for domestic, industrial, commercial or agricultural use or otherwise affects the public welfare.

"Highway" means any public street, public alley, or public road.

"Inclination survey" means ~~a well or corehole survey, using the surface location of the well or corehole as the apex, to determine the deviation of the well or corehole from the true vertical beneath the apex on the same horizontal subsurface plane~~ survey taken inside a wellbore that measures the degree of deviation of the point of the survey from true vertical.

"Inhabited building" means a building, regularly occupied in whole or in part by human beings, including, but not limited to, a private residence, church, school, store, public building or other structure where people are accustomed to assemble except for a building being used on a temporary basis, on a permitted site, for gas, oil, or geophysical operations.

"Intermediate string" means a string of casing that prevents caving, shuts off connate water in strata below the water-protection string, and protects strata from exposure to lower zone pressures.

"Live watercourse" means a definite channel with bed and banks within which water flows continuously.

"Mcf" means, when used with reference to natural gas, 1,000 cubic feet of gas at a pressure base of 14.73 pounds per square inch gauge and a temperature base of 60°F.

"Mud" means ~~any mixture of water and clay or other material as the term is commonly used in the industry~~ a mixture of materials that creates a weighted fluid to be circulated down hole during drilling operations for the purpose of lubricating and cooling the bit, removing cuttings, and controlling formation pressures and fluid.

"Natural channel" or "natural stream" means nontidal waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year, and are characterized as being irregular in cross section with a meandering course.

"Nonerrodible" means a material such as riprap, concrete or plastic that will not experience surface wear due to natural forces.

"Oil well" means any well which produces or appears capable of producing a ratio of less than 6,000 cubic feet (6 Mcf) of gas to each barrel of oil, on the basis of a gas-oil ratio test.

"Open hole completion" means a technique used to make a well capable of production in which no production casing is set through the productive zones.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity.

"Petitioner" means any person or business who files a petition, appeal, or other request for action with the Division of Gas and Oil or the Virginia Gas and Oil Board.

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"Plug" means the ~~stopping sealing of, or a device or material used for the stopping sealing of, the flow of water, a gas or oil wellbore or casing to prevent the migration of water, gas, or oil~~ stopping sealing of, or a device or material used for the stopping sealing of, the flow of water, a gas or oil wellbore or casing to prevent the migration of water, gas, or oil from one stratum to another.

"Pre-development" means the land use and site conditions that exist at the time that the operations plan is submitted to the division.

"Produced waters" means water or fluids produced from a gas well, oil well, coalbed methane gas well or gob well as a byproduct of producing gas, oil or coalbed methane gas.

"Producer" means a permittee operating a well in Virginia that is producing or is capable of producing gas or oil.

"Production string" means a string of casing or tubing through which the well is completed and may be produced and controlled.

"Red shales" means the undifferentiated shaley portion of the ~~bluestone~~ Bluestone formation normally found above the Pride Shale Member of the formation, and extending upward to the base of the Pennsylvanian strata, which red shales are predominantly red and green in color but may occasionally be gray, grayish green and grayish red.

"Red zone" is a zone in or contiguous to a permitted area that could have potential hazards to workers or to the public.

"Retention basin" means a stormwater management facility which, similar to a detention basin, temporarily impounds runoff and discharges its outflow through an outlet to a downstream channel. A retention basin is a permanent impoundment.

"Sediment basin" means a depression formed from the construction of a barrier or dam built to retain sediment and debris.

"Sheet flow," also called overland flow, means shallow, unconcentrated and irregular flow down a slope. The length of strip for sheet flow usually does not exceed 200 feet under natural conditions.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope.

"Special diligence" means the activity and skill exercised by a good ~~businessman~~ businessperson in ~~his~~ a particular specialty, which must be commensurate with the duty to be performed and the individual circumstances of the case; not merely the diligence of an ordinary person or nonspecialist.

"Stabilized" means able to withstand normal exposure to air and water flows without incurring erosion damage.

"Stemming" means the inert material placed in a borehole after an explosive charge for the purpose of confining the explosion gases in the borehole or the inert material used to separate the explosive charges (decks) in decked holes.

"Storm sewer inlet" means any structure through which stormwater is introduced into an underground conveyance system.

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

"String of pipe" or "string" means the total footage of pipe of uniform size set in a well. The term embraces conductor pipe, casing and tubing. When the casing consists of segments of different size, each segment constitutes a separate string. A string may serve more than one purpose.

"Sulfide stress cracking" means embrittlement of the steel grain structure to reduce ductility and cause extreme brittleness or cracking by hydrogen sulfide.

"Surface mine" means an area containing an open pit excavation, surface operations incident to an underground mine, or associated activities adjacent to the excavation or surface operations, from which coal or other minerals are produced for sale, exchange, or commercial use; and includes all buildings and equipment above the surface of the ground used in connection with such mining.

"Target formation" means the geologic gas or oil formation identified by the well operator in his application for a gas, oil or geophysical drilling permit.

"Temporary stream crossing" means a temporary span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

"Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedance probability with a 10% chance of being equaled or exceeded in any given year.

"Tubing" means the small diameter string set after the well has been drilled from the surface to the total depth and through which the gas or oil or other substance is produced or injected.

"Two-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedance probability with a 50% chance of being equaled or exceeded in any given year.

"Vertical ventilation hole" means any hole drilled from the surface to the coal seam used only for the safety purpose of removing gas from the underlying coal seam and the adjacent strata, thus, removing the gas that would normally be in the mine ventilation system.

"Water bar" means a small obstruction constructed across the surface of a road, pipeline right-of-way, or other area of

ground disturbance in order to interrupt and divert the flow of water down the on a grade of the road and divert the water to provide for sediment control for the purpose of controlling erosion and sediment migration.

"Water-protection string" means a string of casing designed to protect groundwater-bearing strata.

**4VAC25-150-60. Due dates for reports and decisions.**

A. Where the last day fixed for ~~(i) submitting a request for a hearing, holding a hearing or issuing a decision in an enforcement action under Article 3 (4VAC25 150 170 et seq.) of this part, (ii) submitting a monthly or annual report under Article 4 (4VAC25 150 210 et seq.) of this part, (iii) submitting a report of commencement of activity under 4VAC25 150 230, (iv) submitting a drilling report, a completion report or other report under 4VAC25 150 360, or (v) submitting a plugging affidavit under 4VAC25 150 460 or any required report~~ falls on a Saturday, Sunday, or any day on which the Division of Gas and Oil office is closed as authorized by the Code of Virginia or the Governor, the required action may be done on the next day that the office is open.

B. All submittals to or notifications of the Division of Gas and Oil identified in subsection A of this section shall be made to the division office no later than 5 p.m. on the day required by the Act or by this chapter.

Article 2  
Permitting

**4VAC25-150-80. Application for a permit.**

A. Applicability.

1. Persons required in § 45.1-361.29 of the Code of Virginia to obtain a permit or permit modification shall apply to the division on the forms prescribed by the director. All lands on which gas, oil or geophysical operations are to be conducted shall be included in a permit application.

2. In addition to specific requirements for variances in other sections of this chapter, any applicant for a variance shall, in writing, document the need for the variance and describe the alternate measures or practices to be used.

B. The application for a permit shall, as applicable, be accompanied by the fee in accordance with § 45.1-361.29 of the Code of Virginia, the bond in accordance with § 45.1-361.31 of the Code of Virginia, and the fee for the Orphaned Well Fund in accordance with § 45.1-361.40 of the Code of Virginia.

C. Each application for a permit shall include information on all activities, including those involving associated facilities, to be conducted on the permitted site. This shall include the following:

1. The name and address of:
  - a. The gas, oil or geophysical applicant;
  - b. The agent required to be designated under § 45.1-361.37 of the Code of Virginia; and
  - c. Each person whom the applicant must notify under § 45.1-361.30 of the Code of Virginia;
2. The certifications required in § 45.1-361.29 E of the Code of Virginia;
3. The proof of notice to affected parties required in § 45.1-361.29 E of the Code of Virginia, which shall be:
  - a. A copy of a signed receipt or electronic return receipt of delivery of notice by certified mail;
  - b. A copy of a signed receipt acknowledging delivery of notice by hand; or
  - c. If all copies of receipt of delivery of notice by certified mail have not been signed and returned within 15 days of mailing, a copy of the mailing log or other proof of the date the notice was sent by certified mail, return receipt requested;
4. If the application is for a permit modification, proof of notice to affected parties, as specified in subdivision C 3 of this section;
4. 5. Identification of the type of well or other gas, oil or geophysical operation being proposed;
5. 6. The plat in accordance with 4VAC25-150-90;
6. 7. The operations plan in accordance with 4VAC25-150-100;
7. 8. The information required for operations involving hydrogen sulfide in accordance with 4VAC25-150-350;
8. 9. The location where the Spill Prevention Control and Countermeasure (SPCC) plan is available, if one is required;
9. 10. The Department of Mines, Minerals and Energy, Division of Mined Land Reclamation's permit number for any area included in a Division of Mined Land Reclamation permit on which a proposed gas, oil or geophysical operation is to be located;
10. 11. For an application for a conventional well, the information required in 4VAC25-150-500;
11. 12. For an application for a coalbed methane gas well, the information required in 4VAC25-150-560;
12. 13. For an application for a geophysical operation, the information required in 4VAC25-150-670; and
13. 14. For an application for a permit to drill for gas or oil in Tidewater Virginia, the environmental impact



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assessment meeting the requirements of § 62.1-195.1 B of the Code of Virginia.

D. After July 1, 2009, all permit applications and plats submitted to the division shall be in electronic form or a format prescribed by the director.

## 4VAC25-150-90. Plats.

A. When filing an application for a permit for a well or corehole, the applicant also shall file an accurate plat certified by a licensed professional engineer or licensed land surveyor on a scale, to be stated thereon, of 1 inch equals 400 feet (1:4800). The scope of the plat shall be large enough to show the board approved unit and all areas within the greater of 750 feet or one half of the distance specified in § 45.1-361.17 of the Code of Virginia from the proposed well or corehole, ~~or within a unit established by the board for the subject well.~~ The plat shall be submitted on a form prescribed by the director.

B. The known courses and distances of all property lines and lines connecting the permanent points, landmarks or corners within the scope of the plat shall be shown thereon. All lines actually surveyed shall be shown as solid lines. Lines taken from deed or chain of title descriptions only shall be shown by broken lines. All property lines shown on a plat shall agree with surveys, deed descriptions, or acreages used in county records for tax assessment purposes.

C. A north and south line shall be given and shown on the plat, and point to the top of the plat.

D. Wells or coreholes shall be located on the plat as follows:
















1. The proposed or actual surface elevation of the subject well or corehole shall be shown on the plat, within an accuracy of one vertical foot. The surface elevation shall be tied to either a government benchmark or other point of proven elevation by differential or aerial survey, ~~or~~ by

trigonometric leveling, or by Global Positioning System (GPS) survey. The location of the government benchmark or the point of proven elevation and the method used to determine the surface elevation of the subject well or corehole shall be noted and described on the plat.

2. The proposed or actual horizontal location of the subject well or corehole determined by survey shall be shown on the plat. The proposed or actual well or corehole location shall be shown in accordance with the Virginia Coordinate System of 1983, as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System.

3. The courses and distances of the well or corehole location from two permanent points or landmarks on the tract shall be shown; such landmarks shall be set stones, iron pipes, T-rails or other manufactured monuments, including mine coordinate monuments, and operating or abandoned wells which are platted to the accuracy standards of this section and on file with the division. If temporary points are to be used to locate the actual well or corehole location as provided for in 4VAC25-150-290, the courses and distances of the well or corehole location from the two temporary points shall be shown.

4. Any other well, permitted or drilled, within the distance specified in § 45.1-361.17 of the Code of Virginia or the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well shall be shown on the plat or located by notation. The type of each well shall be designated by the following symbols as described in the Federal Geographic Data Committee (FGDC) Digital Cartographic Standard for Geologic Map Symbolization:

a.	New drilling location		
b.	Canceled application or permit		CNC
c.	Oil well		
d.	Gas well other than CBM		
e.	Dry hole		
f.	Enhanced oil recovery injection well		LI
g.	Waste disposal well		WD
h.	Underground gas storage well		GS
i.	Abandoned well		  LI  WD
j.	New coalbed methane drilling location		CBM
k.	Coalbed methane gas well		CBM
l.	Abandoned coalbed methane gas well		CBM

OPERATION TYPE	SYMBOL	FGDC REF. NO.
<b>CBM</b>		
Active		19.5.57
Plugged/Abandoned		19.5.59
<b>Conventional</b>		
Active		19.5.54
Plugged/Abandoned		19.5.56
<b>Oil</b>		
Active		19.5.40
Plugged/Abandoned		19.5.42
<b>Pipeline</b>		
Aboveground		30.3.24
Underground		30.3.23
<b>Other</b>		
Proposed Well		19.5.10
Horizontal Well		19.5.14
Waste Disposal Well		19.5.26
Gas Storage Well		19.5.92
Facility		30.3.15

Symbols for additional features as required in 4VAC25-150-510, 4VAC25-150-590, and 4VAC25-150-680 should be taken from the FDGC standard where applicable.

E. Plats shall also contain:

1. For a conventional gas and oil or injection well, the information required in 4VAC25-150-510;
2. For a coalbed methane gas well, the information required in 4VAC25-150-590; or
3. For a corehole, the information required in 4VAC25-150-680.

F. Any subsequent application for a new permit or permit modification shall include an accurate copy of the well plat, updated as necessary to reflect any changes on the site, newly discovered data or additional data required since the last plat was submitted. Any revised plat shall be certified as required in subsection A of this section.

**4VAC25-150-100. Operations plans.**

A. Each application for a permit or permit modification shall include an operations plan, in a format approved by or on a form prescribed by the director. The operations plan and accompanying maps or drawings shall become part of the terms and conditions of any permit which is issued.

B. The applicant shall indicate how risks to the public safety or to the site and adjacent lands are to be managed, consistent with the requirements of § 45.1-361.27 B of the Code of Virginia, and shall provide a short narrative, if pertinent. The operations plan shall identify "red zone" areas.

**4VAC25-150-110. Permit supplements and permit modifications.**

A. Permit supplements.

1. Standard permit supplements. A permittee shall be allowed to submit a permit supplement when work being performed ~~either:~~

- a. Does not change the disturbance area as described in the original permit; ~~or~~ and
- b. Involves activities previously permitted.

The permittee shall submit written documentation of the changes made to the permitted area ~~within seven working~~ no later than 30 days after completing the change. All other changes to the permit shall require a permit modification in accordance with § 45.1-361.29 of the Code of Virginia.

2. Emergency permit supplements. If a change must be implemented immediately for an area off the disturbance area as described in the original permit, or for an activity

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not previously permitted due to actual or threatened imminent danger to the public safety or to the environment, the permittee shall:

- a. Take immediate action to minimize the danger to the public or to the environment;
- b. ~~Orally notify~~ Notify the director as soon as possible of actions taken to minimize the danger and, if the director determines an emergency still exists and grants oral approval, commence additional changes if necessary; and
- c. Submit a ~~written~~ supplement to the permit within seven working days of notifying the director with a written description of the emergency and action taken. The supplement shall contain a description of the activity which was changed, a description of the new activity, and any amended data, maps, plats, or other information required by the director. An incident report may also be required as provided for in 4VAC25-150-380.

Any changes to the permit are to be temporary and restricted to those that are absolutely necessary to minimize danger. Any permanent changes to the permit shall require a permit modification as provided for in subsection B of this section.

## B. Permit modifications.

1. Applicability. All changes to the permit which do not fit the description contained in subsection A of this section shall require a permit modification in accordance with § 45.1-361.29 of the Code of Virginia.

2. Notice and fees. Notice of a permit modification shall be given in accordance with § 45.1-361.30 of the Code of Virginia. The application for a permit modification shall be accompanied, as applicable, by the fee in accordance with § 45.1-361.29 of the Code of Virginia and the bond in accordance with § 45.1-361.31 of the Code of Virginia.

3. Waiver of right to object. Upon receipt of notice, any person may, on a form approved by the director, waive the time requirements and their right to object to a proposed permit modification. The department shall be entitled to rely upon the waiver to approve the permit modification.

4. Permit modification. The permittee shall submit a written application for a permit modification on a form prescribed by the director. The permittee may not undertake the proposed work until the permit modification has been issued. ~~The~~ As appropriate, the application shall include, but not be limited to:

- a. The name and address of:
  - (1) The permittee; and
  - (2) Each person whom the applicant must notify under § 45.1-361.30 of the Code of Virginia;

b. The certifications required in § 45.1-361.29 E of the Code of Virginia;

c. The proof of notice required in § 45.1-361.29 E of the Code of Virginia, as provided for in 4VAC25-150-80 C 3;

d. Identification of the type of work for which a permit modification is requested;

e. The plat in accordance with 4VAC25-150-90;

f. All data, maps, plats and plans in accordance with 4VAC25-150-100 necessary to describe the activity proposed to be undertaken;

g. When the permit modification includes abandoning a gas or oil well as a water well, a description of the plugging to be completed up to the water-bearing formation and a copy of the permit issued for the water well by the Virginia Department of Health;

h. The information required for operations involving hydrogen sulfide in accordance with 4VAC25-150-350 if applicable to the proposed operations;

i. The location where the Spill Prevention Control and Countermeasure (SPCC) plan is available, if one has been developed for the site of the proposed operations;

j. The Department of Mines, Minerals and Energy, Division of Mined Land Reclamation's permit number for any area included in a Division of Mined Land Reclamation permit; and

k. The information, as appropriate, required in 4VAC25-150-500, 4VAC25-150-560, ~~or~~ 4VAC25-150-670, or 4VAC25-150-720.

## **4VAC25-150-120. Transfer of permit rights.**

### A. Applicability.

1. No transfer of rights granted by a permit shall be made without prior approval from the director.

2. Any approval granted by the director of a transfer of permit rights shall be conditioned upon the proposed new operator complying with all requirements of the Act, this chapter and the permit.

B. Application. Any person requesting a transfer of rights granted by a permit shall submit a written application on a form prescribed by the director. The application shall be accompanied by a fee of ~~\$65~~ \$75 and bond, in the name of the person requesting the transfer, in accordance with § 45.1-361.31 of the Code of Virginia. The application shall contain, but is not limited to:

1. The name and address of the current permittee, the current permit number and the name of the current operation;

2. The name and address of the proposed new operator and the proposed new operations name;

3. Documentation of approval of the transfer by the current permittee;

4. If the permit was issued on or before September 25, 1991, an updated operations plan, in accordance with 4VAC25-150-100, showing how all permitted activities to be conducted by the proposed new permittee will comply with the standards of this chapter;

5. If the permit was issued on or before September 25, 1991, for a well, a plat meeting the requirements of 4VAC25-150-90 updated to reflect any changes on the site, newly discovered data or additional data required since the last plat was submitted, including the change in ownership of the well; and

6. If the permit was issued on or before September 25, 1991, if applicable, the docket number and date of recordation of any order issued by the board for a pooled unit, pertaining to the current permit.

C. Standards for approval. The director shall ~~not~~ approve the transfer of permit rights ~~unless~~ when the proposed new permittee:

1. Has registered with the department in accordance with § 45.1-361.37 of the Code of Virginia;

2. Has posted acceptable bond in accordance with § 45.1-361.31 of the Code of Virginia; and

3. Has no outstanding debt pursuant to § 45.1-361.32 of the Code of Virginia.

D. The new permittee shall be responsible for any violations of or penalties under the Act, this chapter, or conditions of the permit after the director has approved the transfer of permit rights.

**4VAC25-150-135. Waiver of right to object to permit applications.**

Upon receipt of notice, any person may, on a form approved by the director, waive the time requirements and their right to object to a proposed permit application. ~~The department~~ division shall be entitled to rely upon the waiver to approve the permit application.

**4VAC25-150-140. Objections to permit applications.**

A. Objections shall be filed in writing, at the office of the ~~Division~~ division, in accordance with § 45.1-361.35 of the Code of Virginia. The director shall notify affected parties of an objection as soon as practicable.

B. If after the director has considered notice to be given under 4VAC25-150-130 B of this chapter, a person submits an objection with proof of receipt of actual notice within 15

days prior to submitting the objection, then the director shall treat the objection as timely.

C. Objections to an application for a new or modified permit shall contain:

1. The name of the person objecting to the permit;

2. The date the person objecting to the permit received notice of the permit application;

3. Identification of the proposed activity being objected to;

4. A statement of the specific reason for the objection;

5. A request for a stay to the permit, if any, together with justification for granting a stay; and

6. Any other information the person objecting to the permit wishes to provide.

D. When deciding to convene a hearing pursuant to § 45.1-361.35 of the Code of Virginia, the director shall consider the following:

1. Whether the person objecting to the permit has standing to object as provided in § 45.1-361.30 of the Code of Virginia;

2. Whether the objection is timely; and

3. Whether the objection meets the applicable standards for objections as provided in § 45.1-361.35 of the Code of Virginia.

E. If the director decides not to hear the objection, then he shall notify the person who objects and the permit applicant in writing, indicating his reasons for not hearing the objection, and shall advise the objecting person of his right to appeal the decision.

**4VAC25-150-150. Hearing and decision on objections to permit applications.**

A. In any hearing on objections to a permit application:

1. The hearing shall be an informal fact finding hearing in accordance with the Administrative Process Act, ~~§ 9-6.14.11~~ 2.2-4019 of the Code of Virginia.

2. The permit applicant and any person with standing in accordance with § 45.1-361.30 of the Code of Virginia may be heard.

3. Any valid issue in accordance with § 45.1-361.35 of the Code of Virginia may be raised at the hearing. The director shall determine the validity of objections raised during the hearing.

B. The director shall, as soon after the hearing as practicable, issue his decision in writing and hand deliver or send the decision by certified mail to all parties to the hearing. ~~The director shall mail the decision, or a summary of~~

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~~the decision, to all other persons given notice of the hearing.~~  
The decision shall include:

1. The subject, date, time and location of the hearing;
2. The names of the persons objecting to the permit;
3. A summary of issues and objections raised at the hearing;
4. Findings of fact and conclusions of law;
5. The text of the decision, including any voluntary agreement; and
6. Appeal rights.

C. Should the director deny the permit issuance and allow the objection, a written notice of the decision shall be sent to any person receiving notice of the permit.

## **4VAC25-150-160. Approval of permits and permit modifications.**

A. Permits, permit modifications, permit renewals, and transfer of permit rights shall be granted in writing by the director.

B. The director may not issue a permit, permit renewal, or permit modification prior to the end of the time period for filing objections pursuant to § 45.1-361.35 of the Code of Virginia unless, upon receipt of notice, any person may, on a form approved by the director, waive the time requirements and their right to object to a proposed permit application or permit modification application. The ~~department~~ division shall be entitled to rely upon the waiver to approve the permit application or permit modification.

C. The director may not issue a permit to drill for gas or oil in Tidewater Virginia until he has considered the findings and recommendations of the Department of Environmental Quality, as provided for in § 62.1-195.1 of the Code of Virginia and, where appropriate, has required changes in the permitted activity based on the Department of Environmental Quality's recommendations.

D. The provisions of any order of the Virginia Gas and Oil Board that govern a gas or oil well permitted by the director shall become conditions of the permit.

## **4VAC25-150-180. Notices of violation.**

A. The director may issue a notice of violation if he finds a violation of any of the following:

1. Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia;
2. This chapter;
3. 4VAC25 Chapter 160 (4VAC25-160-10 et seq.) entitled "The Virginia Gas and Oil Board Regulation";
4. Any board order; or

5. Any condition of a permit, which does not create an imminent danger or harm for which a closure order must be issued under 4VAC5-150-190.

B. A notice of violation shall be in writing, signed, and set forth with reasonable specificity:

1. The nature of the violation, including a reference to the section or sections of the Act, applicable regulation, order or permit condition which has been violated;
2. A reasonable description of the portion of the operation to which the violation applies, including an explanation of the condition or circumstance that caused the portion of the operation to be in violation, if it is not self-evident in the type of violation itself;
3. The remedial action required, which may include interim steps; and
4. A reasonable deadline for abatement, which may include a deadline for accomplishment of interim steps.

C. The director may extend the deadline for abatement or for accomplishment of an interim step, if the failure to meet the deadline previously set was not caused by the permittee's lack of diligence. An extension of the deadline for abatement may not be granted when the permittee's failure to abate has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

D. If the permittee fails to meet the deadline for abatement or for completion of any interim steps, the director shall issue a closure order under 4VAC25-150-190.

E. The director shall terminate a notice of violation by written notice to the permittee when he determines that all violations listed in the notice of violation have been abated.

F. A permittee issued a notice of violation may request, in writing to the director, an informal fact-finding hearing to review the issuance of the notice. This written request ~~should~~ shall be made within 10 days of receipt of the notice. The permittee may request, in writing to the director, an expedited hearing.

G. A permittee is not relieved of the duty to abate any violation under a notice of violation during an appeal of the notice. A permittee may apply for an extension of the deadline for abatement during an appeal of the notice.

H. The director shall issue a decision on any request for an extension of the deadline for abatement under a notice of violation within five days of receipt of such request. The director shall conduct an informal fact-finding hearing, in accordance with the Administrative Process Act, § ~~9-6.14:11~~ 2.2-4019 of the Code of Virginia, no later than 10 days after receipt of the hearing request.

I. The director shall affirm, modify, or vacate the notice in writing to the permittee within five days of the date of the hearing.

**4VAC25-150-190. Closure orders.**

A. The director shall immediately order a cessation of operations or of the relevant portion thereof, when he finds any condition or practice which:

1. Creates or can be reasonably expected to create an imminent danger to the health or safety of the public, including miners; or
2. Causes or can reasonably be expected to cause significant, imminent, environmental harm to land, air or water resources.

B. The director may order a cessation of operations or of the relevant portion thereof, when:

1. A permittee fails to meet the deadline for abatement or for completion of any interim step under a notice of violation;
2. Repeated notices of violations have been issued for the same condition or practice; or
3. Gas, oil or geophysical operations are being conducted by any person without a valid permit from the Division of Gas and Oil.

C. A closure order shall be in writing, signed and shall set forth with reasonable specificity:

1. The nature of the condition, practice or violation;
2. A reasonable description of the portion of the operation to which the closure order applies;
3. The remedial action required, if any, which may include interim steps; and
4. A reasonable deadline for abatement, which may include deadline for accomplishment of interim steps.

D. A closure order shall require the person subject to the order to take all steps the director deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

E. If a permittee fails to abate a condition or practice or complete any interim step as required in a closure order, the director shall issue a show cause order under 4VAC25-150-200.

F. The director shall terminate a closure order by written notice to the person subject to the order when he determines that all conditions, practices or violations listed in the order have been abated.

G. A person issued a closure order may request, in writing to the director, an informal fact-finding hearing to review the issuance of the order within 10 days of receipt of the order.

The person may request, in writing to the director, an expedited hearing within three days of receipt of the order.

H. A person is not relieved of the duty to abate any condition under, or comply with, any requirement of a closure order during an appeal of the order.

I. The director shall conduct an informal fact-finding hearing, in accordance with the Administrative Process Act, § ~~9-6.14:11~~ 2.2-4019 of the Code of Virginia, no later than 15 days after the order was issued, or in the case of an expedited hearing, no later than five days after the order was issued.

J. The director shall affirm, modify, or vacate the closure order in writing to the person the order was issued to no later than five days after the date of the hearing.

**4VAC25-150-200. Show cause orders.**

A. The director may issue a show cause order to a permittee requiring justification for why his permit should not be suspended or revoked whenever:

1. A permittee fails to abate a condition or practice or complete any interim step as required in a closure order;
2. A permittee fails to comply with the provisions of 4VAC25 Chapter 160 (4VAC25-160-10 ~~et seq.~~) entitled "The Virginia Gas and Oil Board Regulation"; or
3. A permittee fails to comply with the provisions of an order issued by the Virginia Gas and Oil Board.

B. A show cause order shall be in writing, signed, and set forth with reasonable specificity:

1. The permit number of the operation subject to suspension or revocation; and
2. The reason for the show cause order.

C. The permittee shall have five days from receipt of the show cause order to request in writing an informal fact-finding hearing.

D. The director shall conduct an informal fact-finding hearing, in accordance with the Administrative Process Act, § ~~9-6.14:11~~ 2.2-4019 of the Code of Virginia, no later than five days after receipt of the request for the hearing.

E. The director shall issue a written decision within five days of the date of the hearing.

F. If the permit is revoked, the permittee shall immediately cease operations on the permit area and complete reclamation within the deadline specified in the order.

G. If the permit is suspended, the permittee shall immediately commence cessation of operations on the permit area and complete all actions to abate all conditions, practices or violations, as specified in the order.

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## Article 4 Reporting

### 4VAC25-150-210. Monthly reports.

A. Each producer shall submit a monthly report, on a form prescribed by the director or in a format approved by the director to the division no later than ~~45~~ 90 days after the last day of each month.

#### B. Reports of gas production.

1. Every producer of gas shall report in Mcf the amount of production from each well.
2. Reports shall be summarized by county or city.
3. Reports shall provide the date of any new connection of a well to a gathering pipeline or other marketing system.

#### C. Reports of oil production.

1. Every producer of oil shall report in barrels the amount of oil production, oil on hand and oil delivered from each well.
2. Reports shall be summarized county or city.
3. Reports shall provide the date of any new connection of a well to a gathering pipeline or other marketing system.

D. Reports of shut-in wells. If a well is shut-in or otherwise not produced during any month, it shall be so noted on the monthly report.

### 4VAC25-150-220. Annual reports.

A. Each permittee shall submit a calendar-year annual report to the division by no later than March 31 of the next year.

#### B. The annual report shall include as appropriate:

1. A confirmation of the accuracy of the permittee's current registration filed with the division or a report of any change in the information;
2. The name, address and phone number or numbers of the persons to be contacted at any time in case of an emergency;
3. Production of gas or oil on a well-by-well and county-by-county or city-by-city basis for each permit or as prescribed by the director and the average price received for each Mcf of gas and barrel of oil;
4. Certification by the permittee that the permittee has paid all severance taxes for each permit; ~~and~~
5. When required, payment to the Gas and Oil Plugging and Restoration Fund as required in § 45.1-361.32 of the Code of Virginia; and
6. Certification by the permittee that bonds on file with the director have not been changed.

## Article 5 Technical Standards

### 4VAC25-150-230. Commencement of activity.

A. Gas, oil or geophysical activity commences with ground-disturbing activity.

B. A permittee shall notify the division at least ~~two working days~~ 48 hours prior to commencing ground-disturbing activity, drilling a well or corehole, completing or recompleting a well or plugging a well or corehole. The permittee shall notify the division, either orally or in writing, of the ~~permit number~~ operation name and the date and time that the work is scheduled to commence. Should activities not commence as first noticed, the permittee shall make every effort to update the division and reschedule the commencement of activity, indicating the specific date and time the work will be commenced.

C. For dry holes and in emergency situations, the operator ~~may~~ shall notify the division, ~~orally or in writing,~~ within ~~two working days~~ 48 hours of commencing plugging activities.

### 4VAC25-150-240. Signs.

A. Temporary signs. Each permittee shall keep a sign posted at the point where the access road enters the permitted area of each well or corehole being drilled or tested, showing the name of the well or corehole permittee, the well name and the permit number, the telephone number for the Division of Gas and Oil and a telephone number for use in case of an emergency or for reporting problems.

The sign shall be posted from the commencement of construction until:

1. The well is completed;
2. The dry hole or corehole is plugged;
3. The site is stabilized; or
4. The permanent sign is posted.

B. Permanent signs. Each permittee shall keep a permanent sign posted in a conspicuous place on or near every producing well or well capable of being placed into production and on every associated facility. For any well drilled or sign replaced after September 25, 1991, the sign shall:

1. Be a minimum of 18 inches by 14 inches in size;
2. Contain, at a minimum, the permittee's name, the well name and the permit number, the Division of Gas and Oil phone number and the telephone number to use in case of an emergency or for reporting problems;
3. Contain lettering a minimum of ~~1-1/4~~ 1-1/4; inches high; and

4. For a well, be located on the well or on a structure such as a meter house or pole located within 50 feet of the well head.

C. Signs designating "red zone" areas within the permit boundary are to be maintained in good order, include reflective material or be lighted so to be visible at night, and located as prescribed by the operator's "red zone" safety plan internal to the operations plan.

~~C. D.~~ All signs shall be maintained or replaced as necessary to be kept in a legible condition.

**4VAC25-150-250. Blasting and explosives.**

A. Applicability. This section governs all blasting on gas, oil or geophysical sites, except for:

1. Blasting being conducted as part of seismic exploration where explosives are placed and shot in a borehole to generate seismic waves; or
2. Use of a device containing explosives for perforating a well.

B. Certification.

1. All blasting on gas, oil and geophysical sites shall be conducted by a person who is certified by the Board of Mineral Mining Examiners, the Board of Coal Mining Examiners, or by the Virginia Department of Housing and Community Development.

2. The director may accept a certificate issued by another state in lieu of the certification required in subdivision B 1 of this section, provided the Board of Mineral Mining Examiners, the Board of Coal Mining Examiners, or the Department of Housing and Community Development has approved reciprocity with that state.

C. Blasting safety. Blasting shall be conducted in a manner as prescribed by 4VAC25-110, Regulations Governing Blasting in Surface Mining Operations, designed to prevent injury to persons, ~~or~~ and damage to features described in the operations plan under 4VAC25-150-100 B.

~~1. When blasting is conducted within 200 feet of a pipeline or high voltage transmission line, the blaster shall take due precautionary measures for the protection of the pipeline or high voltage transmission line, and shall notify the owner of the facility or his agent that such blasting is intended.~~

~~2. Flyrock shall not be allowed to fall farther from the blast than one half the distance between the blast and the nearest inhabited building, and in no case outside of the permitted area.~~

~~3. When blasting near a highway, the blaster must ensure that all traffic is stopped at a safe distance from the blast. Blasting areas shall be posted with warning signs.~~

~~4. All blasting shall be conducted during daylight hours, one half hour before sunrise to one half hour after sunset, unless approved by the director.~~

~~5. Misfires.~~

- ~~a. The handling of a misfired blast shall be under the direct supervision of a certified blaster.~~
- ~~b. When a misfire occurs, the blaster shall wait for at least 15 minutes or the period of time recommended by the manufacturer of the explosives and the detonator, whichever is longer, before allowing anyone to return to the blast site.~~

~~6. Blasting signals.~~

- ~~a. Before a blast is fired, a warning signal audible to a distance of at least one half mile shall be given by the blaster in charge, who shall make certain that all surplus explosives are in a safe place and that all persons are at a safe distance from the blast site or under sufficient cover to protect them from the effects of the blast.~~
- ~~b. A code of warning signals shall be established and posted in one or more conspicuous places on the permitted site, and all employees shall be required to conform to the code.~~

~~7. Explosives and detonators shall be placed in substantial, nonconductive, closed containers (such as those containers meeting standards prescribed by the Institute of Makers of Explosives) when brought on the permitted site. Explosives and detonators shall not be kept in the same container. Containers shall be posted with warning signs.~~

~~8. Storage of explosives and detonators on gas, oil or geophysical sites is allowed only with prior approval by the director.~~

~~9. The permittee shall report to the Division of Gas and Oil by the quickest means possible any theft or unaccounted-for loss of explosives. When reporting such a theft or loss, the permittee shall indicate other local, state and federal authorities contacted.~~

~~10. Damaged or deteriorated explosives and detonators shall be destroyed by a certified blaster in accordance with the manufacturer's recommendations.~~

~~D. Ground vibration:~~

~~1. The ground vibration limits in this subsection shall not apply on surface property owned or leased by the permittee, or on property for which the surface owner gives a written waiver specifically releasing the operator from the limits.~~

~~2. Blasting without seismographic monitoring. Blasting may be conducted by a certified blaster without seismographic monitoring provided the maximum charge is determined by the formula  $W = (D/D_0)^2$  where W is the~~



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maximum weight of explosive in pounds per delay (eight milliseconds or greater); D is the actual distance in feet from the blast location to the nearest inhabited building; and  $D_s$  is the scaled distance factor to be applied without seismic monitoring, as found in Table 1.25.D-1.

TABLE 1.25.D-1: MAXIMUM ALLOWABLE PEAK VELOCITY

Distance (D) from blasting site in feet	Maximum allowable peak particle velocity ( $V_{max}$ ) for ground vibration, in inches/second	Scaled Distance Factor ( $D_s$ ) to be applied without seismic monitoring
0 to 300	1.25	50
301 to 5000	1.00	55
5001 and beyond	0.75	65

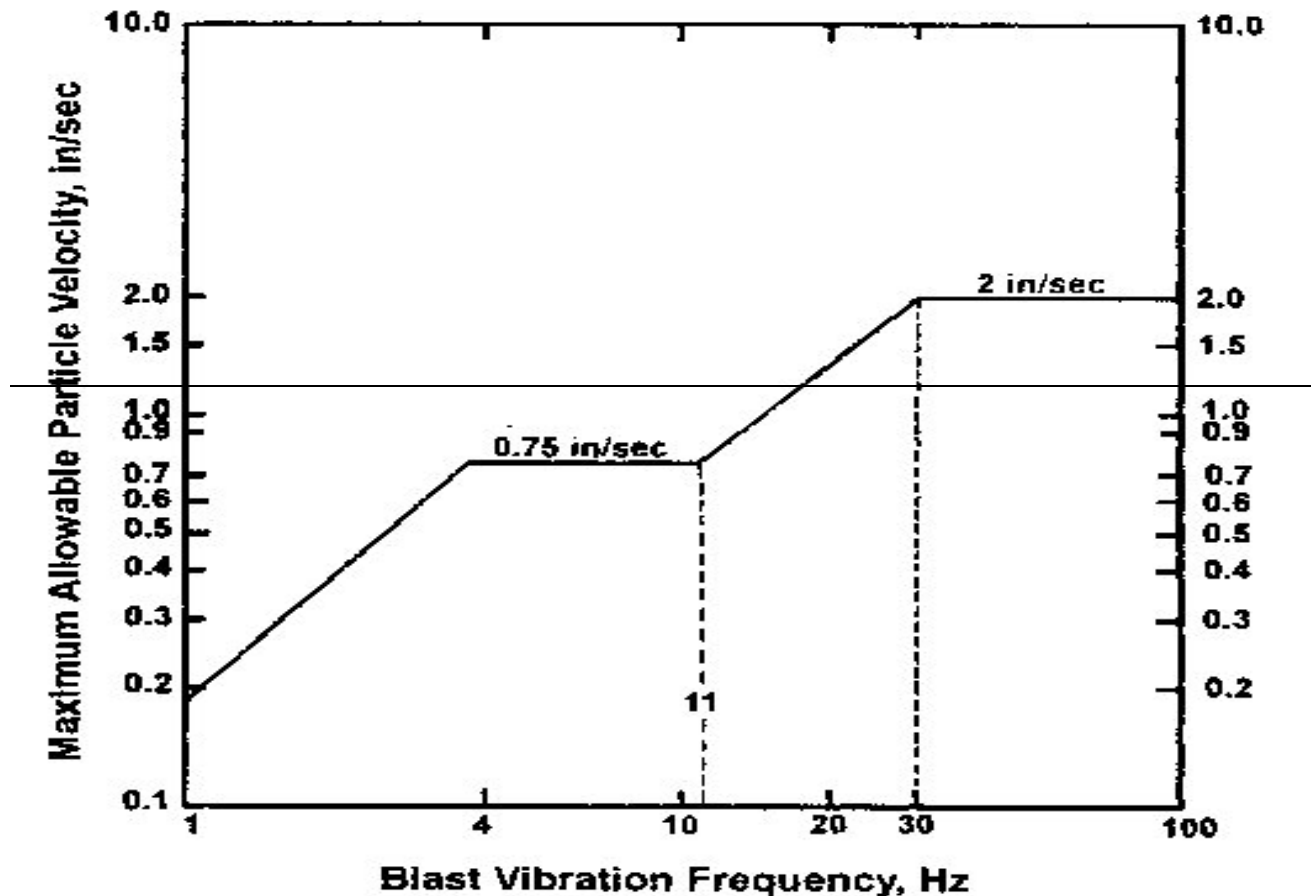
3. Blasting with seismographic monitoring.

a. A permittee may use the ground vibration limits in Table 1.25.D-2 to determine the maximum allowable peak particle velocity. If Table 1.25.D-2 is used, a seismographic record including both particle velocity and vibration frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the director before implementation of this alternative blasting level.

b. The permittee may choose to record every blast. As long as the seismographic records indicate particle velocities have remained within the limits prescribed in Tables 1.25.D-1 or 1.25.D-2, the permittee shall be considered to be in compliance with this subsection.

Table 1.25.D-2: ALTERNATIVE BLASTING LEVEL CRITERIA

(Source modified from figure B-1, Bureau of Mines R(8507))



~~§§~~

~~e. Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.~~

~~d. All seismic tests carried out for the purposes of this section shall be analyzed by a qualified seismologist.~~

~~e. All seismic tests carried out for the purposes of this section shall be conducted with a seismograph that has an upper end flat frequency response of at least 200 Hz.~~

~~E. Airblast shall not exceed the maximum limits prescribed in Table 1.25.E 1 at the location of any inhabited building. The 0.1 Hz or lower, flat response or C weighted, slow response shall be used only when approved by the director.~~

Table 1.25.E 1: AIRBLAST LIMITS

Lower Frequency Limit of measuring system, in Hz (+3db)		Measurement Level, in db
0.1 Hz or Lower	Flat Response	134 Peak
2 Hz or Lower	Flat Response	133 Peak
6 Hz or Lower	Flat Response	129 Peak
C-weighted	Slow Response	105 Peak

~~F. If the director concludes that blasting on a particular site has potential to create unsafe conditions, then he may:~~

~~1. Require the permittee to monitor ground vibration and airblast for all blasts on the site for a specified period of time;~~

~~2. Impose more stringent limits on ground vibration and airblast levels than those specified in this section. The director may order the permittee to obtain an evaluation of the blast site by a vibration consultant or a technical representative of the explosives manufacturer before imposing a more stringent limit. Blasting may not resume on the site being evaluated until the evaluation and recommendations are submitted to the director, and the director has given his approval.~~

~~G. Records:~~

~~1. The permittee shall keep records of all blasts, and these records shall contain the following:~~

- ~~a. Name of company or contractor;~~
- ~~b. Location, date, and time of the blast;~~
- ~~c. Name, signature, and certification number of the blaster in charge;~~

~~d. Type of material blasted;~~

~~e. Number of holes; their burden and spacing;~~

~~f. Diameter and depth of the holes;~~

~~g. Types of explosives used;~~

~~h. Total amount of explosives used per hole;~~

~~i. Maximum weight of explosives per delay period;~~

~~j. Method of firing and the type of circuit;~~

~~k. Direction and distance in feet to the nearest inhabited building;~~

~~l. Weather conditions (including wind directions, etc.);~~

~~m. Height or length of stemming;~~

~~n. Description of any mats or other protection used;~~

~~o. Type of detonators and delay periods used; and~~

~~p. Any seismograph reports, including:~~

~~(1) The name and signature of the person operating the seismograph;~~

~~(2) The name of the person analyzing the seismograph record;~~

~~(3) The exact location of the seismograph in relation to the blast;~~

~~(4) The date and time of the reading; and~~

~~(5) The seismograph reading.~~

~~2. The permittee shall retain all records of blasting, including seismograph reports, for at least three years. On request, the permittee shall make these records available for inspection by the director division.~~

**4VAC25-150-260. Erosion, sediment control and reclamation.**

A. Applicability. Permittees shall meet the erosion and sediment control standards of this section whenever there is a ground disturbance for a gas, oil or geophysical operation. Permittees shall reclaim the land to the standards of this section after the ground-disturbing activities are complete and the land will not be used for further permitted activities.

B. Erosion and sediment control plan. Applicants for a permit shall submit an erosion and sediment control plan as part of their operations plan. The plan shall describe how erosion and sedimentation will be controlled and how reclamation will be achieved.

C. Erosion and sediment control standards. Whenever ground is disturbed for a gas, oil or geophysical operation, the following erosion and sediment control standards shall be met.

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1. All trees, shrubs and other vegetation shall be cleared as necessary before any blasting, drilling, or other site construction, including road construction, begins.

a. Cleared vegetation shall be either removed from the site, properly stacked on the permitted site for later use, burned, or placed in a brush barrier if needed to control erosion and sediment control. Only that material necessary for the construction of the permitted site shall be cleared. When used as a brush barrier, the cleared vegetation shall be cut and windrowed below a disturbed area so that the brush barrier will effectively control sediment migration from the disturbed area. The material shall be placed in a compact and uniform manner within the brush barrier and not perpendicular to the brush barrier. Brush barriers shall be constructed so that any concentrated flow created by the barrier is released into adequately protected outlets and adequate channels. Large diameter trunks, limbs, and stumps that may render the brush barrier ineffective for sediment control shall not be placed in the brush barrier.

b. During construction ~~of the project, topsoil, soil~~ sufficient to provide a suitable growth medium for permanent stabilization with vegetation shall be ~~segregated and stockpiled. Soil stockpiles shall be stabilized~~ used to stabilize the site in accordance with the standards of subdivisions C 2 and C 3 of this section ~~to prevent erosion and sedimentation.~~

2. Except as provided for in subdivisions C 5 and C 12 c of this section, permanent or temporary stabilization measures shall be applied to denuded areas within 30 days of achievement of final grade on the site unless the area will be redisturbed within 30 days.

a. If no activity occurs on a site for a period of 30 consecutive days then stabilization measures shall be applied to denuded areas within seven days of the last day of the 30-day period.

b. Temporary stabilization measures shall be applied to denuded areas that may not be at final grade but will be left inactive for one year or less.

c. Permanent stabilization measures shall be applied to denuded areas that are to be left inactive for more than one year.

3. A permanent vegetative cover shall be established on denuded areas to achieve permanent stabilization on areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is uniform, mature enough to survive and will inhibit erosion.

4. Temporary sediment control structures such as basins, traps, berms or sediment barriers shall be constructed prior

to beginning other ground-disturbing activity and shall be maintained until the site is stabilized.

5. Stabilization measures shall be applied to earthen structures such as sumps, diversions, dikes, berms and drainage windows within 30 days of installation.

6. Sediment basins.

a. Surface runoff from disturbed areas that is composed of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The sediment basin shall be designed and constructed to accommodate the anticipated sediment loading from the ground-disturbing activity. The spillway or outfall system design shall take into account the total drainage area flowing through the disturbed area to be served by the basin.

b. If surface runoff that is composed of flow from other drainage areas is separately controlled by other erosion and sediment control measures, then the other drainage area is not considered when determining whether the three-acre limit has been reached and a sediment basin is required.

7. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. No trees, shrubs, stumps or other woody material shall be placed in fill.

8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.

9. Whenever water seeps from a slope face, adequate drainage or other protection shall be provided.

10. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.

11. Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.

12. Live watercourses.

a. When any construction required for erosion and sediment control, reclamation or stormwater management must be performed in a live watercourse, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area. Nonrodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonrodible cover materials.

b. When the same location in a live watercourse must be crossed by construction vehicles more than twice in any six-month period, a temporary stream crossing constructed of nonerodible material shall be provided.

c. The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.

13. If more than 500 linear feet of trench is to be open at any one time on any continuous slope, ditchline barriers shall be installed at intervals no more than the distance in the following table and prior to entering watercourses or other bodies of water.

Distance Barrier Spacing

Percent of Grade	Spacing of Ditchline Barriers in Feet
3-5	135
6-10	80
11-15	60
16+	40

14. Where construction vehicle access routes intersect a paved or public road, provisions, such as surfacing the road, shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned by the end of the day.

15. The design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, and any other necessary design criteria required by the director to ensure control of erosion, sedimentation and runoff, and safety appropriate for their planned duration and use. This shall include, at a minimum, that roads are to be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:

- a. Control or prevent erosion and siltation by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;
- b. Control runoff to minimize downstream sedimentation and flooding; and
- c. Use nonacid or nontoxic substances in road surfacing.

16. Unless approved by the director, all temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed. Trapped sediment and the disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized within

the permitted area to prevent further erosion and sedimentation.

D. Final reclamation standards.

1. All equipment, structures or other facilities not required for monitoring the site or permanently marking an abandoned well or corehole shall be removed from the site, unless otherwise approved by the director.

2. ~~Each pipeline abandoned in place shall be disconnected from all sources of natural gas or produced fluids and purged. Each gathering line abandoned in place, unless otherwise agreed to be removed under a right-of-way or lease agreement, shall be disconnected from all sources and supplies of natural gas and petroleum, purged of liquid hydrocarbons, depleted to atmospheric pressure, and cut off three feet below ground surface, or at the depth of the gathering line, whichever is less, and sealed at the ends. The operator shall provide to the division documentation of the methods used, the date and time the pipeline was purged and abandoned, and copies of any right of way or lease agreements that apply to the abandonment or removal.~~

3. If final stabilization measures are being applied to access roads or ground-disturbed pipeline rights-of-way, or if the rights-of-way will not be redisturbed for a period of 30 days, water bars shall be placed across them at 30-degree angles at the head of all pitched grades and at intervals no more than the distance in the following table:

Percent of Grade	Spacing of Water Bars in Feet
3-5	135
6-10	80
11-15	60
16+	40

4. The permittee shall notify the division when the site has been graded and seeded for final reclamation in accordance with subdivision C 3 of this section. Notice may be given orally or in writing. The vegetative cover shall be successfully maintained for a period of two years after notice has been given before the site is eligible for bond release.

5. If the land disturbed during gas, oil or geophysical operations will not be reclaimed with permanent vegetative cover as provided for in subsection C of this section, the permittee or applicant shall, ~~in the operations plan,~~ request a variance to these reclamation standards and propose alternate reclamation standards and an alternate schedule for bond release.

E. The director may waive or modify any of the requirements of this section that are deemed inappropriate or

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too restrictive for site conditions. A permittee requesting a variance shall, in writing, document the need for the variance and describe the alternate measures or practices to be used. Specific variances allowed by the director shall become part of the operations plan. The director shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

## **4VAC25-150-280. Logs and surveys.**

A. Each permittee drilling a well or corehole shall complete a driller's log, a gamma ray log or other log showing the top and bottom points of geologic formations and any other log required under this section. The driller's log shall state, at a minimum, the character, depth and thickness of geological formations encountered, including groundwater-bearing strata, coal seams, mineral beds and gas- or oil-bearing formations.

B. When a permittee or the director identifies that a well or corehole is to be drilled or deepened in an area of the Commonwealth which is known to be underlain by coal seams, the following shall be required:

1. The vertical location of coal seams in the borehole well or corehole shall be determined and shown in the driller's log and gamma ray or other log.
2. The horizontal location of the borehole well or corehole in coal seams shall be determined through an inclination survey from the surface to the lowest known coal seam. Each inclination survey shall be conducted as follows:
  - a. The first survey point shall be taken at a depth not greater than the most shallow coal seam; and
  - b. Thereafter shot points shall be taken at each coal seam or at intervals of 200 feet, whichever is less, to the lowest known coal seam.
3. ~~Prior to drilling any borehole into well or corehole within 500 feet of a coal seam in which active mining is being conducted within 500 feet of where the borehole will penetrate the seam where workers are assigned or travel, as well as any connected sealed or gob areas, or where a mine plan is on file with the Division of Mines, the permittee shall conduct an inclination survey to determine whether the deviation of the borehole well or corehole exceeds one degree from true vertical. If the borehole well or corehole is found to exceed one degree from vertical, then the permittee shall:~~
  - a. Immediately cease operations;
  - b. Immediately notify the coal owner and the division;
  - c. Conduct a directional survey to drilled depth to determine both horizontal and vertical location of the borehole well or corehole; and

d. Unless granted a variance by the director, correct the borehole well or corehole to within one degree of true vertical.

4. Except as provided for in subdivision B 3 of this section, if the deviation of the borehole well or corehole exceeds one degree from true vertical at any point between the surface and the lowest known coal seam, then the permittee shall:

- a. Correct the borehole well or corehole to within one degree of true vertical; or
- b. Conduct a directional survey to the lowest known coal seam and notify the coal owner of the actual borehole well or corehole location.

5. The director may grant a variance to the requirements of subdivisions B 3 and B 4 of this section only after the permittee and coal owners have jointly submitted a written request for a variance stating that a directional survey or correction to the borehole well or corehole is not needed to protect the safety of any person engaged in active coal mining or to the environment.

6. If the director finds that the lack of assurance of the horizontal location of the ~~bore of a~~ well or corehole to a known coal seam poses a danger to persons engaged in active coal mining or the lack of assurance poses a risk to the public safety or the environment, the director may, until 30 days after a permittee has filed the completion report required in 4VAC25-150-360, require that a directional survey be conducted by the permittee.

7. The driller's log shall be updated on a daily basis. The driller's log and results of any other required survey shall be kept at the site until drilling and casing or plugging a dry hole or corehole are completed.

## **4VAC25-150-300. Pits.**

A. General requirements.

1. Pits are to be temporary in nature and are to be reclaimed when the operations using the pit are complete. All pits shall be reclaimed within 90 days unless a variance is requested and granted by the field inspector.
2. Pits may not be used as erosion and sediment control structures or stormwater management structures, and surface drainage may not be directed into a pit.
3. Pits shall have a properly installed and maintained liner or liners made of 10 mil or thicker high-density polyethylene or its equivalent.

~~B. Technical requirements.~~

~~4.~~ 4. Pits shall be constructed of sufficient size and shape to contain all fluids and maintain a two-foot freeboard.

~~2. Pits shall be lined in accordance with the requirements for liners in subdivision A 3 of this section. If solids are not to be disposed of in the pit, the permittee may request a variance to the liner specifications.~~

~~C. B. Operational requirements.~~

1. The integrity of lined pits must be maintained until the pits are reclaimed or otherwise closed. Upon failure of the lining or pit, the operation shall be shut down until the liner and pit are repaired or rebuilt. The permittee shall notify the division, by the quickest available means, of any pit leak.
2. Motor oil and, to the extent practicable, crude oil shall be kept out of the pit. Oil shall be collected and disposed of properly. Litter and other solid waste shall be collected and disposed of properly and not thrown into the pit.
3. At the conclusion of drilling and completion operations or after a dry hole, well or corehole has been plugged, the pit shall be drained in a controlled manner and the fluids disposed of in accordance with 4VAC25-150-420. If the pit is to be used for disposal of solids, then the standards of 4VAC25-150-430 shall be met.

**4VAC25-150-310. Tanks.**

A. All tanks installed on or after September 25, 1991, shall be designed and constructed to contain the fluids to be stored in the tanks and prevent unauthorized discharge of fluids.

B. All tanks shall be maintained in good condition and repaired as needed to ensure the structural integrity of the tank.

C. Every permanent tank or battery of tanks shall be ~~surrounded by a~~ have secondary containment achieved by constructing a dike or firewall with a capacity of ~~1 1/2~~ 1-1/2 times the volume of the ~~single tank, or largest tank in a battery of tanks~~ largest tank when plumbed at the top, or all tanks when plumbed at the bottom, utilizing a double wall tank or another method approved by the division.

D. Dikes and firewalls shall be maintained in good condition, and the reservoir shall be kept free from brush, water, oil or other fluids.

E. Permittees shall inspect the structural integrity of tanks and tank installations, at a minimum, annually. The report of the annual inspection shall be maintained by the permittee for a minimum of three years and be submitted to the director upon request.

F. Load lines shall be properly constructed and operated on the permitted area.

**4VAC25-150-340. Drilling fluids.**

A. Operations plan requirements. Applicants for a permit shall provide, prior to commencing drilling, documentation that the water meets the requirements of subsection B of this

section, and a general description of the additives and muds to be used in all stages of drilling. Providing that the requirement in 4VAC25-150-340 C is met, variations necessary because of field conditions may be made with prior approval of the director and shall be documented in the driller's log.

B. Water quality in drilling.

1. Before the water-protection string is set, permittees shall use one of the following sources of water in drilling:

- a. Water that is from a water well or spring located on the drilling site; or
- b. Conduct an analysis of groundwater within 500 feet of the drilling location, and use:

- (1) Water which is of equal or better quality than the groundwater; or
- (2) Water which can be treated to be of equal or better quality than the groundwater. A treatment plan must be included with the application if water is to be treated.

If, after a diligent search, a groundwater source (such as a well or spring) cannot be found within 500 feet of the drilling location, the applicant may use water meeting the parameters listed in the Department of Environmental Quality's "Water Quality Criteria for Groundwater," 9VAC25-260-230 et seq. The analysis shall include, but is not limited to, the following items:

- (1) Chlorides;
- (2) Total dissolved solids;
- (3) Hardness;
- (4) Iron;
- (5) Manganese;
- (6) PH;
- (7) Sodium; and
- (8) Sulfate.

Drilling water analysis shall be taken within a one-year period preceding the drilling application.

2. After the water-protection string is set, permittees may use waters that do not meet the standards of subdivision B 1 of this section.

C. Drilling muds. No permittee may use an oil-based drilling fluid or other fluid which has the potential to cause acute or chronic adverse health effects on living organisms unless a variance has been approved by the director. Permittees must explain the need to use such materials and provide the material data safety sheets. In reviewing the request for the variance, the director shall consider the concentration of the material, the measures to be taken to control the risks, and the

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need to use the material. Permittees shall also identify what actions will be taken to ensure use of the additives will not cause a lessening of groundwater quality.

## **4VAC25-150-360. Drilling, completion and other reports.**

A. Each permittee conducting drilling shall file, electronically or on a form prescribed by the director, a drilling report within ~~30~~ 90 days after a well reaches total depth.

B. Each permittee drilling a well shall file, electronically or on a form prescribed by the director, a completion report within ~~30~~ 90 days after the well is completed.

C. The permittee shall file the driller's log, the results of any other log or survey required to be run in accordance with this chapter or by the director, and the plat showing the actual location of the well with the drilling report, unless they have been filed earlier.

D. The permittee shall, within ~~two years~~ 90 days of reaching total depth, file with the division the results of any gamma ray, density, neutron and induction logs, or their equivalent, that have been conducted on the wellbore in the normal course of activities that have not previously been required to be filed.

## **4VAC25-150-380. ~~Accidents~~ Incidents, spills and unpermitted discharges.**

A. ~~Accidents. Incidents.~~ A permittee shall, by the quickest available means, notify the ~~director~~ division in the event of any unplanned off-site disturbance, fire, blowout, pit failure, hydrogen sulfide release, unanticipated loss of drilling fluids, or other ~~accident~~ incident resulting in serious personal injury or an actual or potential imminent danger to a worker, the environment, or public safety ~~or welfare~~. The permittee shall take immediate action to abate the actual or potential danger. The permittee shall submit a written or electronic report within seven days of the incident containing:

1. A description of the incident and its cause;
2. The date, time and duration of the incident;
3. A description of the steps that have been taken to date; ~~and~~
4. A description of the steps planned to be taken to prevent a recurrence of the incident: and
5. Other agencies notified.

### B. On-site spills.

1. A permittee shall take all reasonable steps to prevent, minimize, or correct any spill or discharge of fluids on a permitted site which has a reasonable likelihood of adversely affecting human health or the environment. All actions shall be consistent with the requirements of an

abatement plan, if any has been set, in a notice of violation or closure, emergency or other order issued by the director.

2. A permittee shall orally report on-site spills or unpermitted discharges of fluids which are not required to be reported in subsection A of this section to the division within 24 hours. The oral report shall provide all available details of the incident, including any adverse effects on any person or the environment. A written report shall be submitted within seven days of the spill or unpermitted discharge. The written report shall contain:

- a. A description of the incident and its cause;
- b. The period of release, including exact dates and times;
- c. A description of the steps to date; and
- d. A description of the steps to be taken to prevent a recurrence of the release.

C. Off-site spills. Permittees shall submit a written report of any spill or unpermitted discharge of fluids that originates off of a permitted site with the monthly report under 4VAC25-150-210. The written report shall contain:

1. A listing of all agencies contacted about the spill or unpermitted discharge; and
2. All actions taken to contain, clean up or mitigate the spill or unpermitted discharge.

## **4VAC25-150-390. Shut-in wells.**

A. If a well is shut-in or otherwise not produced for a period of 12 consecutive months, the permittee shall measure the shut-in pressure on the production string or strings and report such pressures to the division annually. If the well is producing on the backside or otherwise through the casing, the permittee shall measure the shut-in pressure on the annular space.

B. A report of the pressure measurements on the nonproducing well shall be maintained and reported to the director annually by the permittee for a ~~minimum~~ maximum period of three two years ~~and be submitted to the director upon request~~.

C. Should the well remain in a nonproducing status for a period of two years, the permittee shall submit either a well plugging plan or a future well production plan to the director. A nonproducing well shall not remain unplugged for more than a three-year period unless approved by the director.

## **4VAC25-150-420. Disposal of pit and produced fluids.**

A. Applicability. All fluids from a well, pipeline or corehole shall be handled in a properly constructed pit, tank or other type of container approved by the director.

A permittee shall not dispose of fluids from a well, pipeline or corehole until the director has approved the permittee's plan for permanent disposal of the fluids. Temporary storage

of pit or produced fluids is allowed with the approval of the director. Other fluids shall be disposed of in accordance with the operations plan approved by the director.

B. Application and plan. The permittee shall submit an application for either on-site or off-site permanent disposal of fluids on a form prescribed by the director. Maps and a narrative describing the method to be used for permanent disposal of fluids must accompany the application if the permittee proposes to land apply any fluids on the permitted site. The application, maps, and narrative shall become part of the permittee's operations plan.

C. Removal of free fluids. Fluids shall be removed from the pit to the extent practical so as to leave no free fluids. In the event that there are no free fluids for removal, the permittee shall report this on the form provided by the director.

D. On-site disposal. The following standards for on-site land application of fluids shall be met:

1. Fluids to be land-applied shall meet the parameters listed in the Department of Environmental Quality's "Water Quality Criteria for Groundwater" (9VAC25-260-230 et seq.). following criteria:

Acidity: <alkalinity

Alkalinity: >acidity

Chlorides: <5,000 mg/l

Iron: <7 mg/l

Manganese: <4 mg/l

Oil and Grease: < 15 mg/l

pH: 6-9 Standard Units

Sodium Balance: SAR of 8-12

Sodium Balance: SAR of 8-12

2. Land application of fluids shall be confined to the permitted area.

3. Fluids shall be applied in a manner which will not cause erosion or runoff. The permittee shall take into account site conditions such as slope, soils and vegetation when determining the rate and volume of land application on each site. As part of the application narrative, the permittee shall show the calculations used to determine the maximum rate of application for each site.

4. Fluid application shall not be conducted when the ground is saturated, snow-covered or frozen.

5. The following buffer zones shall be maintained unless a variance has been granted by the director:

a. Fluid shall not be applied closer than 25 feet from highways or property lines not included in the acreage shown in the permit.

b. Fluid shall not be applied closer than 50 feet from surface watercourses, wetlands, natural rock outcrops, or sinkholes.

c. Fluid shall not be applied closer than 100 feet from water supply wells or springs.

6. The permittee shall monitor vegetation for two years after the last fluid has been applied to a site. If any adverse effects are found, the permittee shall report the adverse effects in writing to the division.

7. The director may require monitoring of groundwater quality on sites used for land application of fluids to determine if the groundwater has been degraded.

E. Off-site disposal of fluids.

1. Each permittee using an off-site facility for disposal of fluids shall submit:

a. A copy of a valid permit for the disposal facility to be used; and

b. Documentation that the facility will accept the fluids.

2. Each permittee using an off-site facility for disposal of fluids shall use a waste-tracking system to document the movement of fluids off of a permitted site to their final disposition. Records compiled by this system shall be reported to the division annually and available for inspection on request. Such records shall be retained until such time the injection well is reclaimed and has passed bond release.

#### **4VAC25-150-460. Identifying plugged wells and coreholes; plugging affidavit.**

A. Abandoned wells and coreholes shall be permanently marked in a manner as follows:

1. The marker shall extend not less than 30 inches above the surface and enough below the surface to make the marker permanent.

2. The marker shall indicate the permittee's name, the well name, the permit number and date of plugging.

B. A permittee may apply for a variance from the director to use alternate permanent markers. Such alternate markers shall provide sufficient information for locating the abandoned well or corehole. Provisions shall also be made to provide for the physical detection of the abandoned well or corehole from the surface by magnetic or other means including a certified map with the utilization of current GPS surveys.

C. When any well or corehole has been plugged or replugged in accordance with 4VAC25-150-435, two persons, experienced in plugging wells or coreholes, who participated in the plugging of a well or corehole, shall complete the plugging affidavit designated by the director, setting forth the



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time and manner in which the well or corehole was plugged and filled, and the permanent marker was placed.

D. One copy of the plugging affidavit shall be retained by the permittee, one shall be mailed to any coal owner or operator on the tract where the well or corehole is located, and one shall be filed with the division within ~~30~~ 90 days after the day the well was plugged.

## Part II

### Conventional Gas and Oil Wells and Class II Injection Wells

#### **4VAC25-150-490. Applicability, conventional gas and oil wells and Class II injection wells.**

A. Part II of this chapter sets forth requirements unique to conventional gas and oil wells and wells classified as Class II injection wells by the United States, Environmental Protection Agency under 40 CFR Part 146, Section 146.5.

B. Permittees must comply with the standards of general applicability in Part I of this chapter and with the standards for conventional gas and oil and Class II injection wells in this part, except that whenever the Environmental Protection Agency imposes a requirement under the Underground Injection Control (UIC) Program, 40 CFR Part 146, Sections 146.3, 146.4, 146.5, 146.6, 146.7, 146.8, 146.22 and 146.23 that governs an activity also governed by this chapter, the Environmental Protection Agency requirement shall control ~~and become part of~~ the permit issued under this chapter.

C. An application for a permit for a Class II injection well which has not been previously drilled under a permit from the director shall be submitted as an application for a new permit. An application for a permit for conversion of a permitted gas or oil well to a Class II injection well shall be submitted as an application for a permit modification.

D. The director shall not issue a permit for a Class II injection well until after the Environmental Protection Agency has issued its permit for the injection well.

#### **4VAC25-150-500. Application for a permit, conventional well or Class II injection well.**

A. In addition to the requirements of 4VAC25-150-80 or 4VAC25-150-110, every application for a permit or permit modification for a conventional gas or oil well or a Class II injection well shall contain:

1. The approximate depth to which the well is proposed to be drilled or deepened, or the actual depth to which the well has been drilled;
2. The approximate depth and thickness, if applicable, of all known coal seams, known groundwater-bearing strata, and other known gas or oil strata between the surface and the depth to which the well is proposed to be drilled;
3. If casing or tubing is proposed to be or has been set, a description of the entire casing program, including the size

of each string of pipe, the starting point and depth to which each string is to be or has been set, and the extent to which each string is to be or has been cemented; and

4. If the proposed work is for a Class II injection well, a copy of either the permit issued by, or the permit application filed with the Environmental Protection Agency under the Underground Injection Control Program.

5. An explanation of the procedures to be followed to protect the safety of persons working in and around an underground coal mine for any conventional well or Class II injection well to be drilled within 200 feet of areas where workers are assigned or travel, as well as any connected sealed or gob areas, or where a one-year mine plan is on file with the Division of Mines; which shall, at a minimum, require that notice of such drilling be given by the permittee to the mine operator and the Chief of the Division of Mines at least 10 working days prior to drilling.

B. In addition to the requirements of 4VAC25-150-80 and 4VAC25-150-110, every application for a permit or permit modification for a conventional gas or oil well or a Class II injection well may contain, if the proposed work is to drill, redrill or deepen a well, a plan showing the proposed manner of plugging the well immediately after drilling if the proposed well work is unsuccessful.

#### **4VAC25-150-510. Plats, conventional wells or Class II injection wells.**

A. In addition to the requirements of 4VAC25-150-90, every plat for a conventional gas or oil well shall show:

1. The boundaries of any drilling unit established by the board around the subject well;
2. The boundaries and acreage of the tract on which the well is located or is to be located;
3. The boundaries and acreage of all other tracts within one-half of the distance specified in § 45.1-361.17 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;
4. Surface owners on the tract to be drilled and on all other tracts within the unit where the surface of the earth is to be disturbed;
5. All gas, oil or royalty owners on any tract located within one half of the distance specified in § 45.1-361.17 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;

6. Coal owners and mineral owners on the tract to be drilled and on all other tracts located within 500 feet of the subject well location;

7. Coal operators who have registered operations plans with the department for activities located on the tract to be drilled, or who have applied for or obtained a coal mine license, coal surface mine permit or a coal exploration notice or permit from the department with respect to all tracts within 500 feet of a proposed gas or oil well;

8. Any inhabited building, highway, railroad, stream, permitted surface mine or permitted mine opening within 500 feet of the proposed well; and

9. If the plat is for an enhanced oil recovery injection well, any other well within 2,500 feet of the proposed or actual well location, which shall be presumed to embrace the entire area to be affected by an enhanced oil recovery injection well in the absence of a board order establishing units in the target pool of a different size or configuration.

B. If the well location is underlain by known coal seams, or if required by the director, the well plat shall locate the well and two permanent points or landmarks with reference to the mine coordinate system if one has been established for the area of the well location, and shall in any event show all other wells, surface mines and mine openings within the scope of the plat.

**4VAC25-150-520. Setback restrictions, conventional wells or Class II injection wells.**

No permit shall be issued for any well to be drilled closer than 200 feet from any inhabited building unless site conditions as approved by the director warrant the permission of a lesser distance and there exists a lease or agreement between the operator and the owner of the inhabited building. A copy of the lease or agreement shall accompany the application for a permit.

**4VAC25-150-530. Casing requirements for conventional gas or oil wells.**

A. Water-protection string.

1. Except as provided in subdivision A 5 of this section, the permittee shall set a water-protection string to a point at least 300 feet below the surface or 50 feet below the deepest known groundwater horizon, whichever is deeper, circulated and cemented in to the surface. If the cement does not return to the surface, every reasonable attempt shall be made to fill the annular space by introducing cement from the surface.

2. The operator shall test or require the cementing company to test the cement mixing water for pH and temperature prior to mixing the cement and to record the results on the cementing ticket.

3. After the cement is placed, the operator shall wait a minimum of eight hours and allow the cement to achieve a calculated compressive strength of 500 psi before drilling, unless the director approves a shorter period of time. The wait-on-cement (WOC) time shall be recorded within the records kept at the drilling rig while drilling is taking place.

4. When requested by the director, the operator shall submit copies of cement tickets or other documents that indicate the above specifications have been followed.

5. A coal-protection string may also serve as a water-protection string.

B. Coal-protection strings.

1. When any well penetrates coal seams that have not been mined out, the permittee shall, except as provided in subdivisions B 2 and B 3 of this section, set a coal-protection string. The coal-protection string shall exclude all fluids, oil, gas and gas pressure except that which is naturally present in each coal seam. The coal-protection string shall also exclude all injected material or disposed waste from the coal seams and the wellbore. The string of casing shall be set to a point at least 50 feet below the lowest coal seam, or as provided in subdivision B 3 of this section, and shall be circulated and cemented from that point to the surface or to a point not less than 50 feet into the water-protection string or strings which are cemented to the surface.

2. For good cause shown, either before or after the permit is issued, when the procedure specified in subdivision B 1 is demonstrated by the permittee as not practical, the director may approve a casing program involving the cementing of a coal-protection string in multiple stages, or the cementing of two or more coal-protection strings, or the use of other alternative casing procedures. The director may approve the program provided he is satisfied that the result will be operationally equivalent to compliance with the provisions of subdivision B 1 of this section for the purpose of permitting the subsequent safe mining through of the well or otherwise protecting the coal seams as required by this section. In the use of multiple coal-protection strings, each string below the topmost string shall be cemented at least 50 feet into the next higher string or strings that are cemented to the surface and be verified by a cement top log.

3. Depth of coal-protection strings:

a. A coal-protection string shall be set to the top of the red shales in any area underlain by them unless, on a showing by the permittee in the permit application, the director has approved the casing point of the coal-protection string at some depth less than the top of the red shales. In such event, the permittee shall conduct a gamma ray/density log survey on an expanded scale to

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verify whether the well penetrates any coal seam in the uncased interval between the bottom of the coal-protection string as approved and the top of the red shales.

b. If an unanticipated coal seam or seams are discovered in the uncased interval, the permittee shall report the discovery in writing to the director. The permittee shall cement the next string of casing, whether a part of the intermediate string or the production string, in the applicable manner provided in this section for coal-protection strings, from a point at least 50 feet below the lowest coal seam so discovered to a point at least 50 feet above the highest coal seam so discovered.

c. The gamma ray/density log survey shall be filed with the director at the same time the driller's log is filed under 4VAC25-150-360.

d. When the director believes, after reviewing documentation submitted by the permittee, that the total drilling in any particular area has verified the deepest coal seam higher than the red shales, so that further gamma ray/density logs on an expanded scale are superfluous for the area, he may waive the constructing of a coal-protection string or the conducting of such surveys deeper than 100 feet below the verified depth of the deepest coal seam.

C. Coal-protection strings of wells drilled prior to July 1, 1982. In the case of wells drilled prior to July 1, 1982, through coal seams without coal-protection strings substantially as prescribed in subsection B of this section, the permittee shall retain such coal-protection strings as were set. During the life of the well, the permittee shall, consistent with a plan approved by the director, keep the annular spaces between the various strings of casing adjacent to coal seams open to the extent possible, and the top ends of all such strings shall be provided with casing heads, or such other approved devices as will permit the free passage of gas or oil and prevent filling of the annular spaces with dirt or debris.

D. Producing from more than one stratum. The casing program for any well designed or completed to produce from more than one stratum shall be designed in accordance with the appropriate standard practices of the industry.

E. Casing through voids.

1. When a well is drilled through a void, the hole shall be drilled at least 30 feet below the void, the annular space shall be cemented from the base of the casing up to the void ~~and to the surface from the top of the void, and every reasonable attempt shall be made to fill the annular space from the top of the void to the surface,~~ or it shall be cemented at least 50 feet into the next higher string or strings of casing that are cemented to the surface and be verified by a cement top log.

2. For good cause shown, the director may approve alternative casing procedures proposed by the permittee, provided that the director is satisfied that the alternative casing procedures are operationally equivalent to the requirements imposed by subdivision E 1 of this section.

3. For good cause shown, the director may impose special requirements on the permittee to prevent communication between two or more voids.

F. A well penetrating a mine other than a coal mine. In the event that a permittee has requested to drill a well in such a location that it would penetrate any active mine other than a coal mine, the director shall approve the safety precautions to be followed by the permittee prior to the commencement of activity.

G. Reporting of lost circulation zones. The permittee shall report to the director as soon as possible when an unanticipated void or groundwater horizon is encountered that results in lost circulation during drilling. The permittee shall take every necessary action to protect the lost circulation zone.

## Part III Coalbed Methane Gas Wells

### **4VAC25-150-550. Applicability, coalbed methane wells.**

Part III of this chapter sets forth requirements unique to coalbed methane gas wells. Permittees must comply with the standards of general applicability in Part I of this chapter and with the standards for coalbed methane gas wells in this part.

### **4VAC25-150-560. Application for a permit, coalbed methane well operations.**

A. In addition to the requirements of 4VAC25-150-80 or 4VAC25-150-110, every application for a permit or permit modification for a coalbed methane gas well shall contain:

1. An identification of the category of owner or operator, as listed in § 45.1-361.30 A of the Code of Virginia, that each person notified of the application belongs to;
2. The signed consent required in § 45.1-361.29 of the Code of Virginia;
3. Proof of conformance with any mine development plan in the vicinity of the proposed coalbed methane gas well, when the Virginia Gas and Oil Board has ordered such conformance;
4. The approximate depth to which the well is proposed to be drilled or deepened, or the actual depth if the well has been drilled;
5. The approximate depth and thickness, if applicable, of all known coal seams, known groundwater-bearing strata, and other known gas or oil strata between the surface and the depth to which the well is proposed to be drilled;

6. If casing or tubing is proposed to be or has been set, a description of the entire casing program, including the size of each string of pipe, the starting point and depth to which each string is to be or has been set, and the extent to which each string is to be or has been cemented together with any request for a variance under 4VAC25-150-580;

7. An explanation of the procedures to be followed to protect the safety of persons working in and around an underground coal mine for any coalbed methane gas well to be drilled within 200 feet of ~~or into any area of an active underground coal mine~~ areas where workers are assigned or travel, as well as any connected sealed or gob areas, or where a one-year mine plan is on file with the Division of Mines; which shall, at a minimum, require that notice of such drilling be given by the permittee to the mine operator and the Chief of the Division of Mines at least ~~two~~ 10 working days prior to drilling ~~within 200 feet of or into the mine~~; and

8. If the proposed work is for a Class II injection well, a copy of the Environmental Protection Agency permit, or a copy of the application filed with the Environmental Protection Agency under the Underground Injection Control Program.

B. In addition to the requirements of 4VAC25-150-80 or 4VAC25-150-110, every application for a permit or permit modification for a coalbed methane well or a Class II injection well may contain, if the proposed work is to drill, redrill or deepen a well, a plan showing the proposed manner of plugging the well immediately after drilling if the proposed well work is unsuccessful so that the well must be plugged and abandoned.

**4VAC25-150-590. Plats, coalbed methane wells.**

A. In addition to the requirements of 4VAC25-150-90, every plat for a coalbed methane gas well shall show:

1. Boundaries and acreage of any drilling unit established by the board around the subject well;
2. Boundaries and acreage of the tract on which the well is located or is to be located;
3. Boundaries and acreage of all other tracts within one-half of the distance specified in § 45.1-361.17 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;
4. Surface owners on the tract to be drilled and on all other tracts within the unit where the surface of the earth is to be disturbed;
5. All gas, oil or royalty owners on any tract located within one-half of the distance specified in § 45.1-361.17 of the Code of Virginia or within one-half of the distance to the

nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;

6. Coal owners and mineral owners on the tract to be drilled and on all other tracts located within 750 feet of the subject well location;

7. Coal operators who have registered operations plans with the department for activities located on the tract to be drilled, or who have applied for or obtained a coal mine license, coal surface mine permit or a coal exploration notice or permit from the department with respect to all tracts within 750 feet of a proposed gas or oil well; and

8. Any inhabited building, highway, railroad, stream, permitted surface mine or permitted mine opening within 500 feet of the proposed well.

B. The well plat shall locate the well and two permanent points or landmarks with reference to the mine coordinate system if one has been established for the area of the well location, and shall show all other wells within the scope of the plat.

**4VAC25-150-600. Setback restrictions, coalbed methane wells.**

No permit shall be issued for any well to be drilled closer than 200 feet from any inhabited building, unless site conditions as approved by the director warrant the permission of a lesser distance, and there exists a lease or agreement between the operator and the owner of the inhabited building. A copy of the lease or agreement shall accompany the application for a permit.

**4VAC25-150-610. Casing requirements for coalbed methane gas wells.**

A. Water protection string.

1. Except as provided in subdivision A 5 of this section, the permittee shall set a water-protection string set to a point at least 300 feet below the surface or 50 feet below the ~~lowest~~ deepest known groundwater horizon, whichever is deeper, circulated and cemented to the surface. If cement does not return to the surface, every reasonable effort shall be made to fill the annular space by introducing cement from the surface.
2. The operator shall test or require the cementing company to test the cement mixing water for pH and temperature prior to mixing the cement and to record the results on the cementing ticket.
3. After the cement is placed, the operator shall wait a minimum of eight hours and allow the cement to achieve a calculated compressive strength of 500 psi before drilling, unless the director approves a shorter period of time. The wait-on-cement (WOC) time shall be recorded within the

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records kept at the drilling rig while drilling is taking place.

4. When requested by the director, the operator shall submit copies of cement tickets or other documents that indicate the above specifications have been followed.

5. A coal-protection string may also serve as a water protection string.

## B. Coal protection strings.

1. When any well penetrates coal seams that have not been mined out, the permittee shall, except as provided in subdivisions B 2 and B 3 of this section, set a coal-protection string. The coal-protection string shall exclude all fluids, oil, gas, and gas pressure, except that which is naturally present in each coal seam. The coal-protection string shall also exclude all injected material or disposed waste from the coal seams or the wellbore. The string of casing shall be set to a point at least 50 feet below the lowest coal seam, or as provided in subdivision B 3 of this section, and shall be circulated and cemented from that point to the surface, or to a point not less than 50 feet into the water-protection string or strings which are cemented to the surface.

2. For good cause shown, either before or after the permit is issued, when the procedure specified in subdivision B 1 is demonstrated by the permittee as not practical, the director may approve a casing program involving:

- a. The cementing of a coal-protection string in multiple stages;
- b. The cementing of two or more coal-protection strings; or
- c. The use of other alternative casing procedures.

3. The director may approve the program, provided he is satisfied that the result will be operationally equivalent to compliance with the provisions of subdivision B 1 of this section for the purpose of permitting the subsequent safe mining through the well or otherwise protecting the coal seams as required by this section. In the use of multiple coal-protection strings, each string below the topmost string shall be cemented at least 50 feet into the next higher string or strings that are cemented to the surface and be verified by a cement top log.

## 4. Depth of coal-protection strings.

a. A coal-protection string shall be set to the top of the red shales in any area underlain by them unless, on a showing by the permittee in the permit application, the director has approved the casing point of the coal-protection string at some depth less than the top of the red shales. In such event, the permittee shall conduct a gamma-ray/density log survey on an expanded scale to verify whether the well penetrates any coal seam in the

uncased interval between the bottom of the coal-protection string as approved and the top of the red shales.

b. If an unanticipated coal seam or seams are discovered in the uncased interval, the permittee shall report the discovery in writing to the director. The permittee shall cement the next string of casing, whether a part of the intermediate string or the production string, in the applicable manner provided in this section for coal-protection strings, from a point at least 50 feet below the lowest coal seam so discovered to a point at least 50 feet above the highest coal seam so discovered.

c. The gamma-ray/density log survey shall be filed with the director at the same time the driller's log is filed under 4VAC25-150-360.

d. When the director believes, after reviewing documentation submitted by the permittee, that the total drilling in any particular area has verified the deepest coal seam higher than the red shales, so that further gamma-ray/density logs on an expanded scale are superfluous for the area, he may waive the constructing of a coal-protection string or the conducting of such surveys deeper than 100 feet below the verified depth of the deepest coal seam.

C. Coal-protection strings of wells drilled prior to July 1, 1982. In the case of wells drilled prior to July 1, 1982, through coal seams without coal-protection strings as prescribed in subsection B of this section, the permittee shall retain such coal-protection strings as were set. During the life of the well, the permittee shall, consistent with a plan approved by the director, keep the annular spaces between the various strings of casing adjacent to coal seams open to the extent possible, and the top ends of all such strings shall be provided with casing heads, or such other approved devices as will permit the free passage of gas or oil and prevent filling of the annular spaces with dirt or debris.

D. Producing from more than one stratum. The casing program for any well designed or completed to produce from more than one stratum shall be designed in accordance with the appropriate standard practices of the industry.

## E. Casing through voids.

1. When a well is drilled through a void, the hole shall be drilled at least 30 feet below the void. The annular space shall be cemented from the base of the casing up to the void, and ~~to the surface from the top of the void~~ every reasonable attempt shall be made to fill up the annular space from the top of the void to the surface; or it shall be cemented at least 50 feet into the next higher string or strings of casing that are cemented to the surface, and shall be verified by a cement top log.

2. For good cause shown, the director may approve alternate casing procedures proposed by the permittee, provided that the director is satisfied that the alternative casing procedures are operationally equivalent to the requirements imposed by subdivision E 1 of this section.

3. For good cause shown, the director may impose special requirements on the permittee to prevent communication between two or more voids.

F. A well penetrating a mine other than a coal mine. In the event that a permittee has requested to drill a well in such a location that it would penetrate any active mine other than a coal mine, the director shall approve the safety precautions to be followed by the permittee prior to the commencement of activity.

G. Production casing.

1. Unless otherwise granted in a variance from the director:

a. For coalbed methane gas wells with cased completions and cased/open hole completions, production casing shall be set and cemented from the bottom of the casing to the surface or to a point not less than 50 feet into the lowest coal-protection or water-protection string or strings which are cemented to the surface.

b. For coalbed methane gas wells with open hole completions, the base of the casing shall be set to not more than 100 feet above the uppermost coalbed which is to be completed open hole. The casing shall be cemented from the bottom of the casing to the surface or to a point not less than 50 feet into the lowest coal-protection or water-protection string or strings which are cemented to the surface.

2. A coal-protection string may also serve as production casing.

H. Reporting of lost circulation zones. The permittee shall report to the director as soon as possible when an unanticipated void or groundwater horizon is encountered that results in lost circulation during drilling. The permittee shall take every necessary action to protect the lost circulation zone.

**4VAC25-150-620. Coalbed methane gas wellhead equipment.**

Wellhead equipment and facilities installed on any gob well or on any coalbed methane gas well subject to the requirements of §§ 45.1-161.121 and 45.1-161.292 of the Code of Virginia addressing mining near or through a well shall include a safety precaution plan submitted to the director for approval. Such plans shall include, but ~~are~~ shall not be limited to, flame arrestors, back-pressure systems, pressure-relief systems, vent systems and fire-fighting equipment. The director may require additional safety precautions or equipment to be installed on a case-by-case basis.

**4VAC25-150-630. Report of produced waters, coalbed methane wells.**

All coalbed methane gas well operators are required to submit monthly reports of total produced waters withdrawn from coalbed methane gas wells, in barrels, on a well-by-well basis, with the monthly report submitted under 4VAC25-150-210 of this chapter. The report shall show monthly produced water withdrawals and cumulative produced water withdrawals. Such reports shall be available for inspection upon request and maintained electronically or by hard copy until the well is abandoned and reclaimed.

**4VAC25-150-650. ~~Abandonment through conversion~~ Conversion of a coalbed methane well to a vertical ventilation hole.**

A permittee wishing to ~~abandon~~ convert a coalbed methane gas well ~~as to~~ a vertical ventilation hole shall first obtain approval from the Chief of the Division of Mines and submit an application a written request to the division for a permit modification which includes approval from the chief of the Division of Mines release. The director shall consult with the chief, or his designated agent, before approving permit release.

Part IV

Ground-Disturbing Geophysical Exploration

**4VAC25-150-660. Applicability, ground-disturbing geophysical activity.**

Part IV (4VAC25-150-660 et seq.) of this chapter sets forth requirements unique to ground-disturbing geophysical exploration.

**4VAC25-150-670. Application for a permit, geophysical activity or core holes.**

A. In accordance with 4VAC25-150-80 and 4VAC25-150-110, a permit shall be required for ground-disturbing geophysical exploration.

B. In addition to the requirements of 4VAC25-150-80 or 4VAC25-150-110, every application for a corehole permit or permit modification under this part shall contain:

1. The approximate depth to which the corehole is proposed to be drilled or deepened, or the actual depth if the corehole has been drilled;
2. The approximate depth and thickness, if applicable, of all known coal seams, known groundwater-bearing strata, and other known gas or oil strata between the surface and the depth to which the corehole is proposed to be drilled;
3. If casing is proposed to be set, the entire casing program, including the diameter of each string of casing, the starting point and depth to which each string is to be set, whether or not the casing is to remain in the hole after the

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completion of drilling, and the extent to which each string is to be cemented, if applicable; ~~and~~

4. A plan which shows the proposed manner of plugging or replugging the corehole; and

5. An explanation of the procedures to be followed to protect the safety of persons working in and around an underground coal mine for any corehole to be drilled within 200 feet of areas where workers are assigned or travel, as well as any connected sealed or gob areas, or where a one-year mine plan is on file with the Division of Mines. Such procedures shall, at a minimum, require that notice of such drilling be given by the permittee to the mine operator and the Chief of the Division of Mines at least 10 working days prior to drilling.

#### **4VAC25-150-680. Plats, core holes.**

A. In addition to the requirements of 4VAC25-150-90, every plat for a corehole shall show:

1. The boundaries of the tract on which the corehole is located or is to be located;
2. Surface owners on the tract to be drilled and surface owners on the tracts where the surface is to be disturbed;
3. Coal owners and mineral owners on the tract to be drilled;
4. Coal operators who have registered operations plans with the department for activities located on the tract to be drilled; and
5. Any inhabited building, highway, railroad, stream, permitted surface mine or permitted mine opening within 500 feet of the proposed corehole.

B. If the corehole location is underlain by known coal seams, the plat shall locate the corehole and two permanent points or landmarks with reference to the mine coordinate system if one has been established for the area of the corehole location, and shall in any event show all other wells within the scope of the plat.

#### **4VAC25-150-690. Operations plans, core holes.**

In addition to the requirements of 4VAC25-150-100, every operations plan for a corehole shall describe the measures to be followed to protect water quality during the drilling, and the measures to be followed to protect any voids encountered during drilling.

#### **4VAC25-150-700. Setback restrictions, core holes.**

No permit shall be issued for any corehole to be drilled closer than 200 feet from an inhabited building, unless site conditions as approved by the director warrant the permission of a lesser distance, and there exists a lease or agreement between the operator and the owner of the inhabited building.

A copy of the lease or agreement shall accompany the application for a permit.

#### **4VAC25-150-711. Voids and lost ~~circular~~ circulation zones.**

A. Casing through voids.

1. When a corehole is drilled through a void, the hole shall be drilled at least 30 feet below the void. The annular space shall be cemented from the base of the casing up to the void and ~~to the surface from the top of the void~~ every reasonable attempt shall be made to fill the annular space from the top of the void to the surface; or it shall be cemented at least 50 feet into the next higher string or strings of casing that are cemented to the surface and be verified by a cement top log.

2. For good cause shown, the director may approve alternate casing procedures proposed by the permittee, provided that the director is satisfied that the alternative casing procedures are operationally equivalent to the requirements imposed by this section.

3. For good cause shown, the director may impose special requirements on the permittee to prevent communication between two or more voids.

B. Reporting of lost circulation zones. The permittee shall report to the director as soon as possible when an unanticipated void or groundwater horizon is encountered that results in lost circulation during drilling. The permittee shall take every necessary action to protect the lost circulation zone.

#### **Part V Gathering Pipelines**

#### **4VAC25-150-720. Applicability, gathering pipelines.**

A. Part V (4VAC25-150-720 et seq.) of this chapter sets forth requirements unique to gathering pipelines. Permittees must comply with the standards for gathering pipelines in this part and the following standards in Part I:

1. All of Article 1, "General Information"; except 4VAC25-150-50, "Gas or oil in holes not permitted as a gas or oil well";
2. All of Article 2, "Permitting"; except 4VAC25-150-90, "Plats";
3. All of the sections in Article 3, "Enforcement";
4. 4VAC25-150-220, "Annual reports,"; of Article 4, "Reporting";
5. 4VAC25-150-230, 4VAC25-150-240, 4VAC25-150-250, 4VAC25-150-260, 4VAC25-150-270, 4VAC25-150-310, 4VAC25-150-350, 4VAC25-150-380, 4VAC25-150-410, 4VAC25-150-420, and 4VAC25-150-430 of Article 5, "Technical Standards"; and

6. 4VAC25-150-470, "Release of bond,"; of Article 6, "Plugging and Abandonment-";

B. A permit shall be required for installation and operation of every gathering pipeline and associated structures for the movement of gas or oil production from the wellhead to a previously permitted gathering line, a transmission or other line regulated by the United States Department of Transportation or the State Corporation Commission, to the first point of sale, or for oil, to a temporary storage facility for future transportation by a method other than a gathering pipeline.

C. Each gathering pipeline or gathering pipeline system may be permitted separately from gas or oil wells or may be included in the permit for the well being served by the pipeline.

**4VAC25-150-730. General requirements for gathering pipelines.**

A. Gathering pipelines shall be installed to be compatible with other uses of the area.

B. No permit shall be issued for a gathering pipeline to be installed closer than ~~50~~ 100 feet from any inhabited building or railway, unless site conditions as approved by the director warrant the use of a lesser distance and there exists a lease or agreement between the operator, ~~the inhabitants of the building~~ and the owner of the inhabited building or railway. A copy of the lease or agreement shall accompany the application for a permit.

C. Materials used in gathering pipelines shall be able to withstand anticipated conditions. At a minimum this shall include:

1. All plastic gathering pipeline connections shall be fused, not coupled.
2. All buried gathering pipelines shall be detectable by magnetic or other remote means from the surface.

D. All new gathering pipelines shall be tested to maintain a minimum of 110% of anticipated pressure prior to being placed into service.

E. All gathering pipelines shall be maintained in good operating condition at all times.

**4VAC25-150-740. Operations plans for gathering pipelines.**

A. For a gathering pipeline, the operations plan shall be in a format approved by, or on a form prescribed by, the director.

B. On a form prescribed by the director, the operator shall indicate how risks to the public safety or to the site and adjacent lands are to be managed, and shall provide a short narrative, if pertinent.

**4VAC25-150-750. Inspections for gathering pipelines.**

Gathering pipelines shall be visually inspected annually by the permittee. The results of each annual inspection shall be maintained by the permittee for a minimum of three years and be submitted to the director upon request.

V.A.R. Doc. No. R08-1318; Filed August 12, 2009, 11:15 a.m.

**VIRGINIA GAS AND OIL BOARD**

**Proposed Regulation**

Title of Regulation: **4VAC25-160. Virginia Gas and Oil Board Regulations (amending 4VAC25-160-10, 4VAC25-160-30, 4VAC25-160-40, 4VAC25-160-50, 4VAC25-160-60, 4VAC25-160-70, 4VAC25-160-130, 4VAC25-160-190, 4VAC25-160-200).**

Statutory Authority: § 45.1-361.15 of the Code of Virginia.

Public Hearing Information:

October 23, 2009 - 9 a.m. - Department of Mines, Minerals and Energy, 3405 Mountain Empire Road, Buchanan-Smith Building, Conference Room 219, Big Stone Gap, VA

Public Comments: Public comments may be submitted until 5 p.m. on October 30, 2009.

Agency Contact: Tabitha Hibbitts Peace, Policy Analyst, Department of Mines, Minerals and Energy, 3405 Mountain Empire Road, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (276) 523-8212, FAX (276) 523-8148, TTY (800) 828-1120, or email tabitha.peace@dmme.virginia.gov.

Basis: The Department of Mines, Minerals and Energy (DMME) has authority to promulgate this regulation under authority found in §§ 45.1-161.3, 45.1-361.4, and 45.1-361.15 of the Code of Virginia.

Section 45.1-161.3 of the Code of Virginia empowers DMME, with the approval of the director, to promulgate regulations necessary or incidental to the performance of duties or execution of powers under Title 45.1 of the Code of Virginia.

Section 45.1-361.4 of the Code of Virginia empowers the director with the power and duty to regulate gas, oil, or geophysical operations, collect fees, and perform other responsibilities as may be prescribed in regulations promulgated by the Department of Mines, Minerals and Energy, or the Virginia Gas & Oil Board.

Section 45.1-361.15 of the Code of Virginia empowers the Virginia Gas and Oil Board to have the specific authority to issue rules, regulations, or orders pursuant to the provisions of the Administrative Process Act.

Purpose: The Department of Mines, Minerals and Energy and the Virginia Gas and Oil Board have determined the proposed



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regulatory amendments to various sections of 4VAC25-160 (4VAC25-160-30; 4VAC-25-160-40; 4VAC25-160-50; 4VAC25-160-70) are necessary to protect the health, welfare, and safety of citizens, reduce workload, and increase efficiency for applicants. The proposed regulatory actions to 4VAC25-160-200 will update references to external technical documents.

The proposed amendments to various sections of 4VAC25-160 are also essential to protect the health and welfare of citizens by providing clear language that is consistent with state law and regulation.

Substance: As a result of periodic review, the Department of Mines, Minerals and Energy and the Virginia Gas and Oil Board is amending 4VAC25-160, Virginia Gas and Oil Board Regulations, to make technical corrections, improve clarity, increase efficiency, and restore consistency with other chapters.

4VAC25-160-30, 4VAC25-160-40, 4VAC25-160-50, 4VAC25-160-60, 4VAC25-160-70, and 4VAC25-160-200 will be amended to correct several technical areas for accuracy, and provide clarity. These amendments regarding process will aid the gas and oil industry, as well as the Gas and Oil Board in the approval and regulation of gas and oil permits.

Amending 4VAC25-160-30 will reduce workload and increase efficiency for applicants by providing flexibility and economy in the permit process.

Amendments to 4VAC25-160-40, 4VAC25-160-50, and 4VAC25-160-70 are being made to bring consistency to data submission requirements for the Division of Gas and Oil. The use of latitude and longitude and the Virginia Coordinate System of 1927 have been replaced by the Virginia Coordinate System of 1983 in other Division of Gas and Oil regulations. Current industry practice is to use the more modern 1983 coordinate system for describing the locations of wells and core holes. Applicants for permits under this chapter must currently convert their coordinates back to the 1927 system, as required by the regulation, in order to submit them to the Department of Mines, Minerals and Energy's Division of Gas and Oil. The amendment will allow applicants to use the updated 1983 coordinate system.

Issues: These regulatory actions are expected to provide technical corrections, improve clarity, increase efficiency, and restore consistency with other chapters of regulation. These amendments regarding process will aid the gas and oil industry, as well as the Gas and Oil Board in the approval and regulation of gas and oil permits. Reduced workload and increased efficiency for applicants will occur by providing flexibility and economy in the permit process.

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

Summary of the Proposed Amendments to Regulation. The Virginia Gas and Oil Board (Board) proposes to make several clarifications and to update technical language to reflect current conditions. Additionally, the Board proposes two small changes to paperwork requirements.

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

Estimated Economic Impact. Under the current regulations applicants must submit 10 sets of each application and accompanying exhibits. The proposed regulations only require that 8 sets are submitted. This will result in a small amount of savings in time and resources.

The current regulations also require that "Each person offering exhibits into evidence shall also have available a reasonably sufficient number of exhibits for other persons who are subject to the provisions of §§ 45.1-361.19 and 45.1-361.23 of the Code of Virginia and are expected to be in attendance at the hearing." The Board proposes to amend this to "Each person offering exhibits into evidence shall also have available a reasonably sufficient number of exhibits for other persons who are subject to the provisions of §§ 45.1-361.19 and 45.1-361.23 of the Code of Virginia, who have notified the division by certified mail notice of their request for copies of exhibits, and are expected to be in attendance at the hearing. This proposed change will help applicants avoid spending time and resources on producing more copies than are needed. Similar to above though, the expected savings are small.

Businesses and Entities Affected. According to the Department of Mines, Minerals and Energy, four large firms drill most oil and gas wells in Virginia. An unknown number of other companies may also undertake such activities from time to time. None of these would be defined as small businesses. Interested citizens and localities are also potentially affected.

Localities Particularly Affected. Oil and gas wells in Virginia are predominately located in Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, & Wise Counties.<sup>1</sup>

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

Effects on the Use and Value of Private Property. The proposal 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 small businesses.

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

Real Estate Development Costs. The proposed amendments do not 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.

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<sup>1</sup> Source: Department of Mines, Minerals and Energy

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

Summary:

*As a result of periodic review, the Department of Mines, Minerals and Energy and the Virginia Gas and Oil Board are amending 4VAC25-160, Virginia Gas and Oil Board Regulations, to make technical corrections, improve clarity, increase efficiency, and to restore consistency with other chapters. 4VAC25-160-30, 4VAC25-160-40, 4VAC25-160-50, 4VAC25-160-60, 4VAC25-160-70, and 4VAC25-160-200 will be amended to correct several technical areas for accuracy, and provide clarity. Amending 4VAC25-160-30 will reduce workload and increase efficiency for applicants by providing flexibility and economy in the permit process. Amendments to 4VAC25-160-40, 4VAC25-160-50, and 4VAC25-160-70 are being made to bring consistency to data submission requirements for the Division of Gas and Oil.*

**4VAC25-160-10. Definitions.**

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

"Act" means the Virginia Gas and Oil Act of 1990, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia.

"Applicant" or "~~petitioner~~" means a person or business who files an application, petition, appeal or other request ~~for board action~~ with the Division of Gas and Oil.

"Board" means the Virginia Gas and Oil Board.

"Complete application" means all the materials required to be filed by the applicant under this chapter.

"Department" means the Department of Mines, Minerals and Energy.

"Director" means the Director of the Department of Mines, Minerals and Energy or his authorized agent.

"Directional survey" means a well survey that measures the degree of deviation of a hole, or distance, from the vertical and the direction of departure.

"Division" means the Division of Gas and Oil of the Department of Mines, Minerals and Energy.

"Division Director" means the Director of the Division of Gas and Oil.

"Election" means the performance of an act within the time established or required by statute, order or regulation. An election required to be made by board order or regulation must be in writing and (i) be personally delivered to the person or agent of the person described in the order or regulation by the date established or required, or (ii) be mailed to the person or agent of the person described in the order or regulation at the address stated therein and be postmarked by the United States Postal Service before midnight on the date established or required.

"Field" means the general area underlain by one or more pools.

"Gas/oil ratio" means the product of the number of Mcf of natural gas produced from a well divided by the number of barrels of oil produced from the well as determined by a gas/oil ratio test.

"Gas well" means any well which produces or appears capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"Inclination survey" means a well survey to determine the deviation, using the surface location of the well as the apex, of a well bore from the true vertical beneath the apex on the same horizontal subsurface plane.

"Mcf" means, when used with reference to natural gas, 1,000 cubic feet of gas at a pressure base of 14.73 pounds per square inch gauge and a temperature base of 60°F.

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"Mine development plan" means a permit or license application filed with the Division of Mines or Mined Land Reclamation for legal permission to engage in extraction of coal resources.

"Oil well" means any well which produces or appears capable of producing a ratio of less than 6,000 cubic feet (6 Mcf) of gas to each barrel of oil, on the basis of a gas-oil ratio test.

"Petitioner" means any person or business who files a petition, appeal, or other request for action with the Division of Gas and Oil or the Virginia Gas and Oil Board.

"Pooling" means the combining of all interests or estates in a gas, oil or coalbed methane drilling unit for the development and operations thereof. Pooling may be accomplished either through voluntary agreement or through a compulsory order of the board.

"Respondent" means a person named in an application, petition, appeal or other request for board action and against whom relief is sought by the applicant, or a person who under the terms of a board order, is required to make an election.

"Unit operator" means the gas or oil owner designated by the board to operate in or on a pooled unit.

## **4VAC25-160-30. Administrative provisions.**

A. The Virginia Gas and Oil Board shall meet on the third Tuesday of each calendar month unless no action is required by the board or unless otherwise scheduled by the board. All hearings shall be scheduled in accordance with the requirements for notice by publication in § 45.1-361.19 of the Code of Virginia. Except where otherwise established by the Act, the board may establish deadlines for filing materials for meetings or hearings scheduled on other than the third Tuesday of each month.

B. Applications to the board must be filed by the following deadlines:

1. All applications, petitions, appeals or other requests for board action must be received by the division at least 30 calendar days prior to the regularly scheduled meeting of the board. If the 30th day falls on a weekend or a legal holiday, the deadline shall be the prior business day.

2. When required, two copies of the following material must be filed with the division at least seven calendar days prior to the regularly scheduled meeting of the board in order for the application to be considered a complete application:

a. The affidavit demonstrating that due diligence was used to locate and serve persons in accordance with § 45.1-361.19 of the Code of Virginia and 4VAC25-160-40; and

b. Proof of notice by publication in accordance with 4VAC25-160-40 D.

C. A complete application that is not filed by the deadlines of this subsection shall be carried over to the next scheduled meeting of the board. A submission that does not contain a complete application shall not be considered by the board until the application is complete.

D. The division shall assign a docket number to each application or petition at the time of payment receipt and filing, ~~and~~. The division shall notify the applicant of the completed filing and assigned docket number. The docket number shall be referenced when submitting material regarding the application or petition.

E. In addition to the other requirements of this chapter, applications to the board shall meet the following standards:

1. Each application for a hearing before the board shall be headed by a caption which shall contain a heading including:

- a. "Before the Virginia Gas and Oil ~~board~~ Board";
- b. The name of the applicant;
- c. The relief sought; and
- d. The docket number assigned by the division.

2. Each application shall be signed by the applicant, an authorized agent of the applicant, or an attorney for the applicant, certifying that, "The foregoing application to the best of my knowledge, information, and belief is true and correct."

3. Exhibits shall be identified by the docket number and an exhibit number and may be introduced as part of a person's presentation.

4. ~~Persons~~ Applicants shall submit ~~to eight~~ sets of each application and ~~exhibit~~ exhibits. Each person offering exhibits into evidence shall also have available a reasonably sufficient number of exhibits for other persons who are subject to the provisions of §§ 45.1-361.19 and 45.1-361.23 of the Code of Virginia, who have notified the division by certified mail notice of their request for copies of exhibits, and are expected to be in attendance at the hearing.

F. Applications for the establishment and modification of units, spacing or pooling shall be accompanied by a \$130 nonrefundable fee, payable to the Treasurer of Virginia.

G. All parties in any proceeding before the board are entitled to appear in person or be represented by counsel ~~or other qualified representative~~, as provided for in the Administrative Process Act, § 2.2-4000 et seq. of the Code of Virginia.

**4VAC25-160-40. Notice of hearings.**

A. Each applicant for a hearing to establish an exception to statewide spacing under § 45.1-361.17 of the Code of Virginia shall provide notice by certified mail, return receipt requested, to all gas, oil, coal or mineral owners having an interest underlying any tract located within the distances provided in § 45.1-361.17 of the Code of Virginia or the distance to the nearest well completed in the same pool, whichever is less. Each applicant for a hearing to establish an exception to a well location provided for in a drilling unit established by an order of the board shall provide notice by certified mail, return receipt requested, to all gas, oil, coal or mineral owners having an interest underlying the unit where the exception is requested.

B. Each applicant shall include, in or with the mailed notice of the hearing required under § 45.1-361.19 of the Code of Virginia, the following information:

1. The name and address of the applicant and the applicant's counsel, if any;
2. In the case of an application to vacate or amend an order, identification of the order to be vacated or amended;
3. A statement of the relief sought and proposed provisions of the order or proposed order;
4. Citations of statutes, rules, orders and decided cases supporting the relief sought;
5. A statement of the type of well or wells (gas, oil or coalbed methane gas);
6. a. For a pooling order, the notice should include: a plat showing the size and shape of the proposed unit and boundaries of tracts within the unit. The location of the proposed unit shall be shown in accordance with the Virginia Coordinate System of ~~1927~~ 1983, as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. ~~The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series. The plat containing shall include property lines taken from (i) deed descriptions and chain of title, (ii) county courthouse records, or (iii) a physical survey for each land track in the unit. The location of the well and the percentage of acreage in each tract in the unit shall be certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board;~~

b. For a field rule, the notice should include: a description of the pool or pools in the field, the boundaries of the field, information on the acreage and

boundaries of the units proposed to be in the field and any proposed allowable production rates; or

c. For a location exception, the notice should include: a description of the proposed well location in relation to other wells within statewide spacing limits or in relation to the allowable area for drilling within a unit;

7. A description of the interest or claim of the respondent being notified;
8. A description of the formation or formations to be produced;
9. An estimate of the amount of reserves of the unit;
10. An estimate of the allowable costs in accordance with 4VAC25-160-100; and
11. How interested persons may obtain additional information or a complete copy of the application.

C. When after a diligent search the identity or location of any person to whom notice is required to be given in accordance with subsection A or B of this section is unknown at the time the applicant applies for a hearing before the board, the applicant for the hearing shall cause a notice to be published in a newspaper of general circulation in the county, counties, city, or cities where the land or the major portion thereof which is the subject of the application is located. The notice shall include:

1. The name and address of the applicant;
2. A description of the action to be considered by the board;
3. A map showing the general location of the area ~~which that~~ would be affected by the proposed action ~~or~~ and a description ~~which that~~ clearly describes the location or boundaries of the area ~~which that~~ would be affected by the proposed action sufficient to enable local residents to identify the area;
4. The date, time and location of the hearing at which the application is scheduled to be heard; and
5. How interested persons may obtain additional information or a complete copy of the application.

D. Notice of a hearing made in accordance with § 45.1-361.19 of the Code of Virginia or this section shall be sufficient, and no additional notice is required to be made by the applicant upon a postponement or continuance of the hearing.

E. Each applicant for a hearing to modify an order established under § 45.1-361.21 or § 45.1-361.22 of the Code of Virginia shall provide notice in accordance with § 45.1-361.19 of the Code of Virginia to each person having an interest underlying the tract or tracts to be affected by the proposed modification.

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F. An applicant filing a petition to modify a forced pooling order established under § 45.1-361.21 or § 45.1-361.22 of the Code of Virginia to change the unit operator based on a change in the corporate name of the unit operator; a change in the corporate structure of the unit operator; or a transfer of the unit operator's interests to any single subsidiary, parent or successor by merger or consolidation is not required to provide notice. Other applicants for a hearing to modify a forced pooling order shall provide notice in accordance with § 45.1-361.19 of the Code of Virginia to each respondent named in the order to be modified whose interest may be affected by the proposed modification.

## **4VAC25-160-50. Applications for field rules.**

Each application filed under § 45.1-361.20 of the Code of Virginia to establish or modify a field rule, a drilling unit or drilling units shall contain:

1. The name and address of the applicant and the applicant's counsel, if any;
2. In the case of an application to vacate or amend an order, identification of the order to be vacated or amended;
3. A statement of the relief sought and the proposed provisions of the order or a proposed order;
4. Citations of statutes, rules, orders, and decided cases supporting the relief sought;
5. In the case where a field rule is proposed to be established or modified:
  - a. A statement of the type of field (gas, oil or coalbed methane gas);
  - b. A description of the proposed formation or formations subject to the petition; and
  - c. A description of the pool or pools included in the field, based on geological and technical data, including the boundaries of the pool or pools and field, shown in accordance with the Virginia Coordinate System of ~~1927~~ 1983, as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. ~~The boundaries of the pool or pools and field shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series;~~
6. In the case where a drilling unit or units are proposed to be established or modified:
  - a. A statement of the acreage to be embraced within each drilling unit;
  - b. A description of the formation or formations to be produced by the well or wells in the unit or units; and

c. The boundaries of the drilling unit or units shown in accordance with subdivision 5 c of this section;

7. A statement of the amount of acreage to be included in the order;

8. A statement of the proposed allowable production rate or rates and supporting documentation, if applicable;

9. Evidence that any proposal to establish or modify a unit or units for coalbed methane gas will meet the requirements of § 45.1-361.20 C of the Code of Virginia;

10. An affidavit demonstrating that due diligence was used to locate and serve persons in accordance with § 45.1-361.19 of the Code of Virginia and 4VAC25-160-40; and

11. When required, proof of notice by publication in accordance with 4VAC25-160-40 ~~D~~ C.

## **4VAC25-160-60. Applications for exceptions to minimum well spacing requirements.**

Applications for an exception to statewide spacing under § 45.1-361.17 of the Code of Virginia or under a field rule issued by the board shall contain the following:

1. The name and address of the applicant and the applicant's counsel, if any;
2. In the case of an application for an exception to spacing established in a field rule, identification of the order governing spacing in the field;
3. A statement of the proposed location of the well in relation to wells permitted or for which a permit application is pending before the Division of Gas and Oil at the time of filing within the distances prescribed in § 45.1-361.17 of the Code of Virginia;
4. A description of the formation or formations to be produced by the well proposed for alternative spacing and the wells identified in subdivision 3 of this section;
5. A description of the conditions justifying the alternative spacing;
6. An affidavit demonstrating that due diligence was used to locate and serve persons in accordance with 4VAC25-160-40; and
7. When required, proof of notice by publication in accordance with 4VAC25-160-40 ~~D~~ C.

## **4VAC25-160-70. Applications to pool interests in a drilling unit: conventional gas or oil or no conflicting claims to coalbed methane gas ownership.**

A. Applications filed under § 45.1-361.21 of the Code of Virginia to pool interests in a drilling unit for conventional gas or oil or for coalbed methane gas where there are no conflicting claims to ownership of the coalbed methane gas,

except as provided for in subsection B of this section, shall contain the following:

1. The name and address of the applicant and the applicant's counsel, if any;
2. In the case of an application to vacate or amend an order, identification of the order to be vacated or amended;
3. A statement of the relief sought and proposed provisions of the order or a proposed order;
4. Citations of statutes, rules, orders, and decided cases supporting the relief sought;
5. A statement of the type of well or wells (gas, oil or coalbed methane gas);
6. The permit number or numbers, if any have been issued;
7. A plat showing the size and shape of the proposed unit and boundaries of tracts within the unit, shown in accordance with the Virginia Coordinate System of ~~1927~~ 1983, as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System. ~~The proposed unit shall also be located by taking the measured distance in feet from the unit to the nearest 2.5 minute longitude line to the east and the nearest 2.5 minute latitude line to the north on the 7.5 minute (1:24,000) topographic map, with a notation of the 7.5 minute topographic map name and series.~~ Also included shall be the names of owners of record of the tracts, and the percentage of acreage in each tract, certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board;
8. A description of the status of interests to be pooled in the unit at the time the application is filed;
9. For an application to pool a coalbed methane gas unit, a statement of the percentage of the total interest held by the applicant in the proposed unit at the time the application for the hearing is filed;
10. A statement of the names of owners and the percentage of interests to be escrowed under § 45.1-361.21 D of the Code of Virginia for each owner whose location is unknown at the time the application for the hearing is filed;
11. A description of the formation or formations to be produced;
12. An estimate of production over the life of well or wells, and, if different, an estimate of the recoverable reserves of the unit;
13. An estimate of the allowable costs in accordance with 4VAC25-160-100;
14. An affidavit demonstrating that due diligence was used to locate and serve persons in accordance with § 45.1-

361.19 of the Code of Virginia and 4VAC25-160-40 ~~C~~; and

15. When required, proof of notice by publication in accordance with 4VAC25-160-40 ~~D~~ C.

B. Applications to amend an order pooling interests in a drilling unit may be filed by written stipulation of all persons affected. The application is not required to contain the information specified in subsection A of this section, but shall contain the proposed amended language to the order, shown by interlineation.

C. ~~After~~ Within 45 days after the time for election provided in any pooling order has expired, the unit operator shall file an affidavit with the board stating whether or not any elections were made. If any elections were made, the affidavit shall name each respondent making an election and describe the election made. The affidavit shall state if no elections were made or if any response was untimely. The affidavit shall be accompanied by a proposed supplemental order to be made and recorded to complete the record regarding elections. The affidavit and proposed supplemental order shall be filed by the unit operator within 45 days of the last day on which a timely election could have been delivered or mailed, or within 45 days of the last date for payment set forth in the pooling order, whichever occurs last. The applicant shall mail a true and correct copy of any supplemental order to all persons identified in the supplemental order.

**4VAC25-160-130. Appeals of the director's decisions.**

A. Appeals of the division director's decisions shall be filed in writing, at the office of the division, in accordance with §§ 45.1-361.23 and 45.1-361.36 of the Code of Virginia.

B. A petition to appeal a decision of the division director shall contain:

1. The name and address of the petitioner and the petitioner's counsel, if any;
2. Identification of the decision being appealed, and the date the decision was issued;
3. A statement identifying the standing of the petitioner to appeal;
4. A statement setting forth the reasons for the appeal, including errors alleged in the director's decision and the reasons why the decision is deemed contrary to law or regulation;
5. A statement that the issues on appeal were in fact raised as required by § 45.1-361.36 B of the Code of Virginia;
6. A statement setting forth the specific relief requested; and

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7. When a stay to any proposed activity allowed as a result of the director's decision is desired, a request for the stay and the basis for granting the stay.

C. Upon receipt of an appeal containing a request for a stay, the division director shall decide on the request in accordance with § 45.1-361.23 D of the Code of Virginia.

## **4VAC25-160-190. Civil charges.**

A. Civil charges shall be provided for in accordance with § 45.1-361.8 C of the Code of Virginia.

B. The division director, after finding any violation of the Act, a regulation promulgated under the Act, or order of the director or board, or upon direction from the board, may recommend a civil charge against a gas, oil or geophysical operator and shall base the recommendation on the Civil Charge Calculation Procedure established by order of the board.

## **4VAC25-160-200. Surveys and tests.**

A. Deviation tests.

1. An inclination survey shall be made on all rotary drilled wells located in accordance with a field rule established by the board. An inclination survey is not required for wells drilled in accordance with the distance limitations of § 45.1-361.17 of the Code of Virginia.

2. The first shot point shall be at a depth not greater than the bottom of the surface casing or, for a well drilled through a coal seam, at a depth not greater than that of the bottom of the coal protection string. Succeeding shot points shall be no more than 1,000 feet apart, or as otherwise ordered by the director.

3. Inclination surveys conforming to these requirements may be made either during the normal course of drilling or after the well has reached total depth. Survey data shall be certified in writing as being true and correct by the designated agent or person in charge of a permittee's Virginia operations, or the drilling contractor, and shall indicate the resultant lateral deviation as the maximum calculated lateral displacement determined at any inclination survey point in a horizon approved for production, by an order of the board or a permit approved by the director, assuming that all displacement occurs in the direction of the nearest boundary of the unit. The resultant lateral deviation shall be recorded on the drilling or completion report filed by the permittee.

4. If a directional survey determining the location of the bottom of the hole is filed upon completion of the well, it shall not be necessary to file the inclination survey data.

5. A directional survey shall be made when:

a. A well is directionally controlled and is thereby intentionally deflected from vertical;

b. The resultant lateral deviation of any well, calculated from inclination survey data, is greater than the distance from the center of the surface location of the well bore to the nearest boundary of the area where drilling is allowed in a unit established by the board; or

c. A well is drilled as an exception location and a directional survey is ordered by the board.

6. The board or the director, on their own initiative or at the request of a gas or oil owner on a contiguous unit or tract, may require the permittee drilling any well to make a directional survey of the well if there is reasonable cause therefor. Whenever a survey is required by the board or the director at the request of a contiguous owner and the permittee of the well and contiguous owner are unable to agree as to the terms and conditions for making the directional survey, the permittee shall pay for the survey if the bottom hole location is found to be outside of the area approved for drilling, and the contiguous owner shall pay for the survey if the bottom hole location is found to be inside of the area approved for drilling.

7. Directional surveys shall be run from total depth to the base of the surface casing or coal protection string, unless otherwise approved by the board or the director. In the event that the proposed or final location of the producing interval or intervals of any well is not in accordance with this section or a board order, the unit operator shall apply to the board for an exception to spacing. However, directional surveys to total depth shall not be required in cases where the interval below the latest survey is less than 500 feet, and in such an instance, a projection of the latest survey shall be deemed to satisfy board requirements.

8. The results of each inclination or directional survey made in accordance with this section shall be filed by the permittee with the first drilling or completion report required by the ~~department~~ division.

B. Flow potential and gas/oil ratio tests: conventional gas or oil wells.

1. If a gas or oil well appears capable of producing gas or oil, the permittee shall conduct a potential flow test and a gas/oil ratio test within ~~40~~ 14 days after the well is completed and capable of producing gas or oil. The permittee shall file the test results, electronically or in writing, with the ~~director~~ division. The ~~director~~ division ~~director~~ shall hold the test results confidential in accordance with § 45.1-361.6 of the Code of Virginia.

2. If a permittee deepens or stimulates a well after the initial potential flow test and gas/oil ratio test have been conducted, when determined to be necessary by the permittee or when requested by the board, the permittee shall conduct another potential flow test and gas/oil ratio test and, within 30 days after completing the test, file the results, in writing, with the ~~director~~ division.

3. A back-flow method of determining open flow shall be used, such as ~~provided for in~~ recommended by the Interstate Oil and Gas Compact Commission, "Manual of Back-Pressure Testing of Gas Wells," ~~1979~~ 2000. However, when a back-flow method is believed not to be feasible, the permittee shall obtain prior approval from the ~~director~~ division, and test the well in accordance with, an alternate method approved by the director that does not entail excessive physical waste of gas.

C. Testing of coalbed methane gas wells. If a permittee cannot test the potential flow of a coalbed methane gas well by a back-flow method or complete the test within the time period required in subdivision B 1 of this section, the permittee may request approval from the director to perform a coalbed methane gas production test. Such a test shall only be made when the water production and the gas flow rates are stabilized for a period of not less than ~~10~~ 14 days prior to the test. The test shall be conducted for a minimum of 24 hours in the manner approved by the director. The permittee shall file the test results, electronically or in writing, with the ~~director~~ division. The ~~director~~ division director shall hold the test results confidential in accordance with § 45.1-361.6 of the Code of Virginia.

D. The board may, by order and after notice and hearing, require a permittee to complete other tests on any well.

VA.R. Doc. No. R08-1317; Filed August 12, 2009, 11:14 a.m.



**TITLE 8. EDUCATION**

**STATE BOARD OF EDUCATION**

**Final Regulation**

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

**8VAC20-281. Regulations Governing Jointly Owned and Operated Schools and Jointly Operated Programs (adding 8VAC20-281-10, 8VAC20-281-20, 8VAC20-281-30).**

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

Effective Date: October 19, 2009.

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

**Summary:**

*The Regulations Governing Jointly Owned and Operated Schools and Jointly Operated Programs were adopted on or before September 1, 1980. These regulations have not*

*been amended since then and do not address changes made in these programs since that time. Joint schools include academic-year Governor's schools, alternative education centers, career and technical centers, and special education centers. In a concurrent action, the Board of Education is repealing the text of the current regulations (8VAC20-280) and promulgating new regulations (8VAC20-281).*

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

*A new section is added to the final regulation pursuant to Chapter 49 of the 2008 Act of Assembly permitting any joint school already in operation to request a waiver from any new regulation requirements promulgated, effective July 1, 2008.*

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

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

**8VAC20-281-10. Definitions.**

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

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

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

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

"Fiscal agent" means the treasurer of a county or city in which a joint school is physically located or the treasurer



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from one of the participating localities as selected by agreement of the participating local school boards with approval of the participating local governing bodies. (See [ also "finance officer" or ] "treasurer.")

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

"Joint school" means a [ ~~program or school established by two or more local school boards, including a regional public charter school, as defined in § 22.1-212.5 of the Code of Virginia, or a comprehensive school offering part or full day programs~~ joint or regional school or program established by two or more local school boards, pursuant to § 22.1-26 of the Code of Virginia, which may include but is not limited to a regional public charter school, a regional residential charter school, a regional academic year Governor's school, a regional career and technical center, a regional special education program, or a regional alternative education program as defined in § 22.1-209.1:2 of the Code of Virginia ];

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

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

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

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

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

1. Membership. The membership of the joint board shall be composed of at least one member of each of the local school boards participating in the joint program. Each school board shall fill any vacancies in its membership on the joint board. If a member of the joint board ceases to be a member of the school board that elected him, the local school board shall appoint his successor to the joint board. If at any time the number of members of the joint board shall fall below a quorum, the local board shall appoint a member to fill the vacancy or vacancies within 30 calendar days.

Members of the joint board may receive compensation fixed by each of the participating school boards. This

compensation shall be paid by the local boards and shall not exceed the amount paid for service on the local school boards.

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

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

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

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

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

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

Except as otherwise provided, all meetings and procedures of the joint board shall be in accordance with provisions of §§ 22.1-72 through 22.1-75 of the Code of Virginia. Any

action by the joint board shall be deemed an action by the school boards jointly owning such school.

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

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

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

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

- a. Funds to be provided by participating school boards shall be made available to the joint board upon its requests.
- b. Funds to be provided on a fee for service basis shall be paid to the joint board upon receipt of an appropriate invoice.

On a regular monthly basis, the clerk of the joint board shall transmit to the Committee of Superintendents of the participating school boards an itemized statement of receipts and disbursements during the preceding months, with a cumulative statement of all receipts and disbursements since the beginning of the current fiscal year.

**[ 8VAC20-281-30. Waiver of regulations' requirements.**

Effective July 1, 2008, a joint school or program in operation prior to October 19, 2009, may request a waiver of the new requirements of the regulations. This waiver request

shall be submitted to the Board of Education in a manner prescribed by the board. If the Board of Education grants the waiver request, the approved school shall continue to operate under the previous version of the regulations. ]

VA.R. Doc. No. R07-279; Filed August 12, 2009, 10:15 a.m.

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Final Regulation

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-100, 9VAC25-31-290).**

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

**Effective Date:** September 30, 2009.

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

**Summary:**

*This action implements the legislative changes to the State Water Control Law as a result of Chapter 42 of the 2009 Acts of Assembly. These changes clarify public notice requirements for permit applications for land application acreage increases of 50% or more and clarify when a permit for land application is issued in relation to the public meeting and public comment opportunity on the application. The resulting regulatory changes provide that an application for any permit amendments to increase the acreage authorized by the initial permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings and provide that the board shall not issue the permit for land disposal until the public meeting has been held and comment has been received from the local governing body, or until 30 days have lapsed from the date of the public meeting.*

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## Part II

### Permit Applications and Special VPDES Permit Programs

#### **9VAC25-31-100. Application for a permit.**

A. Duty to apply. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 9VAC25-31-420 through 9VAC25-31-720 and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this chapter, or a user of a privately owned treatment works unless the board requires otherwise, shall submit a complete application to the department in accordance with this section. All concentrated animal feeding operations have a duty to seek coverage under a VPDES permit.

B. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

#### C. Time to apply.

1. Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. New discharges composed entirely of storm water, other than those dischargers identified in 9VAC25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9VAC25-31-120 B.

2. All TWTDS whose sewage sludge use or disposal practices are regulated by 9VAC25-31-420 through 9VAC25-31-720 must submit permit applications according to the applicable schedule in subdivision 2 a or b of this subsection.

a. A TWTDS with a currently effective VPDES permit must submit a permit application at the time of its next VPDES permit renewal application. Such information must be submitted in accordance with subsection D of this section.

b. Any other TWTDS not addressed under subdivision 2 a of this subsection must submit the information listed in subdivisions 2 b (1) through (5) of this subsection to the department within one year after publication of a standard applicable to its sewage sludge use or disposal

practice(s), using a form provided by the department. The board will determine when such TWTDS must submit a full permit application.

(1) The TWTDS's name, mailing address, location, and status as federal, state, private, public or other entity;

(2) The applicant's name, address, telephone number, and ownership status;

(3) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of subdivision P 8 d of this section, the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal and the location of any land application sites;

(4) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(5) The most recent data the TWTDS may have on the quality of the sewage sludge.

c. Notwithstanding subdivision 2 a or b of this subsection, the board may require permit applications from any TWTDS at any time if the board determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

d. Any TWTDS that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the department at least 180 days prior to the date proposed for commencing operations.

D. Duty to reapply. 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.

#### E. Completeness.

1. The board shall not issue a permit before receiving a complete application for a permit except for VPDES general permits. An application for a permit is complete when the board receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

2. No application for a VPDES permit to discharge sewage into or adjacent to state waters from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant

is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

3. No application for a new individual VPDES permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. The county, city or town shall inform in writing the applicant and the board of the discharging facility's compliance or noncompliance not more than 30 days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city or town fail to provide such written notification within 30 days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

4. A permit application shall not be considered complete if the board has waived application requirements under subsection J or P of this section and the EPA has disapproved the waiver application. If a waiver request has been submitted to the EPA more than 210 days prior to permit expiration and the EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

5. In accordance with § 62.1-44.19:3 A of the Code of Virginia, no application for a permit or variance to authorize the storage of sewage sludge shall be complete unless it contains certification from the governing body of the locality in which the sewage sludge is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

F. Information requirements. All applicants for VPDES permits, other than POTWs and other TWTDS, shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in subsections G through K of this section).

1. The activities conducted by the applicant which require it to obtain a VPDES permit;
2. Name, mailing address, and location of the facility for which the application is submitted;
3. Up to four SIC codes which best reflect the principal products or services provided by the facility;

4. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;

5. Whether the facility is located on Indian lands;

6. A listing of all permits or construction approvals received or applied for under any of the following programs:

- a. Hazardous Waste Management program under RCRA (42 USC § 6921);
- b. UIC program under SDWA (42 USC § 300h);
- c. VPDES program under the CWA and the law;
- d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);
- e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);
- f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);
- g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);
- h. Dredge or fill permits under § 404 of the CWA; and
- i. Other relevant environmental permits, including state permits.

7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area; and

8. A brief description of the nature of the business.

G. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of 9VAC25-31-100 H, shall provide the following information to the department, using application forms provided by the department.

1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.
2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed

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identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

3. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water run-off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

4. If any of the discharges described in subdivision 3 of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for storm water run-off, spillage or leaks).

5. If an effluent guideline promulgated under § 304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility.

6. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

7. a. Information on the discharge of pollutants specified in this subdivision (except information on storm water discharges which is to be provided as specified in 9VAC25-31-120). When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (2005). When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the board may allow the applicant to test only one outfall and

report that the quantitative data also apply to the substantially identical outfalls. The requirements in e and f of this subdivision that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the board may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

b. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes (applicants submitting permit applications for storm water discharges under 9VAC25-31-120 C may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the board). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9VAC25-31-120 B 1. For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9VAC25-31-120 except pH, temperature, cyanide, total phenols, residual

chlorine, oil and grease, fecal coliform, and fecal streptococcus. The board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 (2005), and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water run-off from the facility.)

c. Every applicant must report quantitative data for every outfall for the following pollutants:

Biochemical oxygen demand (BOD<sub>5</sub>)

Chemical oxygen demand

Total organic carbon

Total suspended solids

Ammonia (as N)

Temperature (both winter and summer)

pH

d. The board may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subdivision 7 c of this subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A (2005)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D (2005) for the applicant's industrial category or categories unless the applicant qualifies as a small business under subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D (2005) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of

selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes; and

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2005) (the toxic metals, cyanide, and total phenols).

f. (1) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (2005) (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(2) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (2005) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (2005) (the organic toxic pollutants).

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (2005) (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

h. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical

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standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(2) Knows or has reason to believe that TCDD is or may be present in an effluent.

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in subdivision 7 e (1) or 7 f (1) of this subsection to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (2005) (the organic toxic pollutants):

a. For coal mines, a probable total annual production of less than 100,000 tons per year; or

b. For all other applicants, gross total annual sales averaging less than \$100,000 per year (in second quarter 1980 dollars).

9. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or by-product. The board may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the board has adequate information to issue the permit.

10. Reserved.

11. An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.

12. If a contract laboratory or consulting firm performed any of the analyses required by subdivision 7 of this subsection, the identity of each laboratory or firm and the analyses performed.

13. In addition to the information reported on the application form, applicants shall provide to the board, at its request, such other information, including pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board, as the board may reasonably require to assess the discharges of the facility and to determine whether to issue a VPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

H. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only nonprocess wastewater. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

2. Date of expected commencement of discharge;

3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;

4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136 (2005). Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(1) Biochemical oxygen demand (BOD<sub>5</sub>).

(2) Total suspended solids (TSS).

(3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).

(4) Total residual chlorine (if chlorine is used).

(5) Oil and grease.

(6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).

(7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).

(8) Ammonia (as N).

(9) Discharge flow.

(10) pH.

(11) Temperature (winter and summer).

b. The board may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

c. If the applicant is a new discharger, he must submit the information required in subdivision 4 a of this subsection by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not submit testing results which he has already performed and reported under the discharge monitoring requirements of his VPDES permit.

d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm water run-off, leaks, or spills);

6. A brief description of any treatment system used or to be used;

7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9VAC25-31-230 G;

8. Signature of certifying official under 9VAC25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

I. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the department, using the application form provided by the department:

1. For concentrated animal feeding operations:

- a. The name of the owner or operator;
- b. The facility location and mailing address;

c. Latitude and longitude of the production area (entrance to the production area);

d. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of subdivision F 7 of this section;

e. Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

f. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

g. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

h. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and

i. For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of coverage.

2. For concentrated aquatic animal production facilities:

a. The maximum daily and average monthly flow from each outfall;

b. The number of ponds, raceways, and similar structures;

c. The name of the receiving water and the source of intake water;

d. For each species of aquatic animals, the total yearly and maximum harvestable weight;

e. The calendar month of maximum feeding and the total mass of food fed during that month; and

f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

J. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the board must provide to the department, at a minimum, the information in this subsection using an application form provided by the department. Permit applicants must submit all information available at the time of



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permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action but does provide notice to the board and permit applicant(s) that the EPA may object to any board-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:

a. Name, mailing address, and location of the facility for which the application is submitted;

b. Name, mailing address, and telephone number of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;

c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;

(2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);

(3) NPDES program under the Clean Water Act (CWA);

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(5) Nonattainment program under the Clean Air Act;

(6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(8) Dredge or fill permits under § 404 of the CWA; and

(9) Other relevant environmental permits, including state permits;

d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

g. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, and VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

- (a) A description of the disposal method, including the location and size of each disposal site, if applicable;
  - (b) The annual average daily volume disposed of by this method, in gallons per day; and
  - (c) Whether disposal through this method is continuous or intermittent;
2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:
- a. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;
  - b. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:
    - (1) Treatment plant area and unit processes;
    - (2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;
    - (3) Each well where fluids from the treatment plant are injected underground;
    - (4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;
    - (5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and
    - (6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;
  - c. Process flow diagram or schematic.
    - (1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and
    - (2) A narrative description of the diagram; and
  - d. The following information regarding scheduled improvements:
    - (1) The outfall number of each outfall affected;
    - (2) A narrative description of each required improvement;
    - (3) Scheduled or actual dates of completion for the following:
      - (a) Commencement of construction;
      - (b) Completion of construction;
      - (c) Commencement of discharge; and
      - (d) Attainment of operational level; and
    - (4) A description of permits and clearances concerning other federal or state requirements;
3. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:
- a. The following information about each outfall:
    - (1) Outfall number;
    - (2) State, county, and city or town in which outfall is located;
    - (3) Latitude and longitude, to the nearest second;
    - (4) Distance from shore and depth below surface;
    - (5) Average daily flow rate, in million gallons per day;
    - (6) The following information for each outfall with a seasonal or periodic discharge:
      - (a) Number of times per year the discharge occurs;
      - (b) Duration of each discharge;
      - (c) Flow of each discharge; and
      - (d) Months in which discharge occurs; and
    - (7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.
  - b. The following information, if known, for each outfall through which effluent is discharged to surface waters:
    - (1) Name of receiving water;
    - (2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;
    - (3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and
    - (4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).
  - c. The following information describing the treatment provided for discharges from each outfall to surface waters:

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(1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(a) Design biochemical oxygen demand (BOD<sub>5</sub> or CBOD<sub>5</sub>) removal (percent);

(b) Design suspended solids (SS) removal (percent); and, where applicable;

(c) Design phosphorus (P) removal (percent);

(d) Design nitrogen (N) removal (percent); and

(e) Any other removals that an advanced treatment system is designed to achieve.

(2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

#### 4. Effluent monitoring for specific parameters.

a. As provided in subdivisions 4 b through j of this subsection, all applicants must submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The board may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

b. All applicants must sample and analyze for the following pollutants:

(1) Biochemical oxygen demand (BOD<sub>5</sub> or CBOD<sub>5</sub>);

(2) Fecal coliform;

(3) Design flow rate;

(4) pH;

(5) Temperature; and

(6) Total suspended solids.

c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the following pollutants:

(1) Ammonia (as N);

(2) Chlorine (total residual, TRC);

(3) Dissolved oxygen;

(4) Nitrate/Nitrite;

(5) Kjeldahl nitrogen;

(6) Oil and grease;

(7) Phosphorus; and

(8) Total dissolved solids.

Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine.

d. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J (2005), and for any other pollutants for which the board or EPA have established water quality standards applicable to the receiving waters.

e. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

f. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The board may require additional samples, as appropriate, on a case-by-case basis.

g. All existing data for pollutants specified in subdivisions 4 b through e of this subsection that is collected within 4-1/2 years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

h. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 (2005) unless an alternative is specified in the existing VPDES permit. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

i. The effluent monitoring data provided must include at least the following information for each parameter:

(1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(3) The analytical method used; and

(4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

j. Unless otherwise required by the board, metals must be reported as total recoverable.

5. Effluent monitoring for whole effluent toxicity.

a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the 4-1/2 years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(1) All POTWs with design flow rates greater than or equal to one million gallons per day;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(3) Other POTWs, as required by the board, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b) The ratio of effluent flow to receiving stream flow;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or

(e) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the board determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the board may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide:

(1) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the board.

e. Applicants must conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range of receiving water dilution. The board recommends that applicants conduct acute or chronic testing based on the following dilutions: (i) acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to subdivision 5 b of this subsection for which such information has not been reported previously to the department.

h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this subsection must be conducted using methods approved under 40 CFR Part 136 (2005), as directed by the board.

i. For whole effluent toxicity data submitted to the department within 4-1/2 years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past 4-1/2 years revealed toxicity.

6. Applicants must submit the following information about industrial discharges to the POTW:

a. Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

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b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined in 9VAC25-31-10, that discharges to the POTW:

- (1) Name and mailing address;
- (2) Description of all industrial processes that affect or contribute to the SIU's discharge;
- (3) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;
- (4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;
- (5) Whether the SIU is subject to local limits;
- (6) Whether the SIU is subject to categorical standards and, if so, under which category and subcategory; and
- (7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past 4-1/2 years.

c. The information required in subdivisions 6 a and b of this subsection may be waived by the board for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in subdivisions 6 a and b of this subsection:

- (1) An annual report submitted within one year of the application; or
- (2) A pretreatment program.

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261 (2005), the applicant must report the following:

- (1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and
- (2) The hazardous waste number and amount received annually of each hazardous waste.

b. If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and § 3004(u) or 3008(h) of RCRA, the applicant must report the following:

(1) The identity and description of the site or facility at which the wastewater originates;

(2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261 (2005), if known; and

(3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if they receive no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) (2005).

8. Each applicant with combined sewer systems must provide the following information:

a. The following information regarding the combined sewer system:

(1) A map indicating the location of the following:

(a) All CSO discharge points;

(b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(c) Waters supporting threatened and endangered species potentially affected by CSOs; and

(2) A diagram of the combined sewer collection system that includes the following information:

(a) The location of major sewer trunk lines, both combined and separate sanitary;

(b) The locations of points where separate sanitary sewers feed into the combined sewer system;

(c) In-line and off-line storage structures;

(d) The locations of flow-regulating devices; and

(e) The locations of pump stations.

b. The following information for each CSO discharge point covered by the permit application:

(1) The following information on each outfall:

(a) Outfall number;

(b) State, county, and city or town in which outfall is located;

(c) Latitude and longitude, to the nearest second;

(d) Distance from shore and depth below surface;

(e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow

volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and

(f) The number of storm events monitored in the past year;

(2) The following information about CSO overflows from each outfall:

- (a) The number of events in the past year;
- (b) The average duration per event, if available;
- (c) The average volume per CSO event, if available; and
- (d) The minimum rainfall that caused a CSO event, if available, in the last year;

(3) The following information about receiving waters:

- (a) Name of receiving water;
- (b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and
- (c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and

(4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).

9. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.

10. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

K. Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of subsection H of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of 9VAC25-31-120 B 1 and this subsection) shall provide the following information to the department, using the application forms provided by the department:

- 1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;
- 2. The expected date of commencement of discharge;

3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

b. A line drawing of the water flow through the facility with a water balance as described in subdivision G 2;

c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water run-off, spillage, or leaks); and

4. If a new source performance standard promulgated under § 306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

5. The requirements in subdivisions H 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The board may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

- (1) Biochemical oxygen demand (BOD).
- (2) Chemical oxygen demand (COD).
- (3) Total organic carbon (TOC).
- (4) Total suspended solids (TSS).
- (5) Flow.
- (6) Ammonia (as N).
- (7) Temperature (winter and summer).
- (8) pH.

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b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (2005) (certain conventional and nonconventional pollutants).

c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2005) (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);

(2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (2005) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

(5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

(6) Hexachlorophene (HCP) (CAS #70-30-4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (2005) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection G of this section. However, the applicant need not complete those portions of subsection G of this section

requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

8. Signature of certifying official under 9VAC25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

L. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided however that a § 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the Administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA) and any other pollutant

which the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a §§ 301(c) or 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 (2005) have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

M. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under § 301(h) of the CWA of requirements of § 301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance

with the requirements of 40 CFR Part 125, Subpart G (2005).

2. A modification under § 302(b)(2) of the CWA of the requirements under § 302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

N. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections L and M of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the board may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 (2005) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions L 2 a (2) or L 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

O. Recordkeeping. Except for information required by subdivision C 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

P. Sewage sludge management. All TWTDS subject to subdivision C 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that



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the EPA may object to any board issued permit issued in the absence of the required information.

1. All applicants must submit the following information:
  - a. The name, mailing address, and location of the TWTDS for which the application is submitted;
  - b. Whether the facility is a Class I Sludge Management Facility;
  - c. The design flow rate (in million gallons per day);
  - d. The total population served;
  - e. The TWTDS's status as federal, state, private, public, or other entity;
  - f. The name, mailing address, and telephone number of the applicant; and
  - g. Indication whether the applicant is the owner, operator, or both.
2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:
  - a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);
  - b. UIC program under the Safe Drinking Water Act (SDWA);
  - c. NPDES program under the Clean Water Act (CWA);
  - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
  - e. Nonattainment program under the Clean Air Act;
  - f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
  - g. Dredge or fill permits under § 404 of the CWA;
  - h. Other relevant environmental permits, including state or local permits.
3. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country.
4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:
  - a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and
  - b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.

5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination(s) of all liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.

6. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in Part VI (9VAC25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:

- a. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.
- b. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.
- c. Applicants must collect and analyze samples in accordance with analytical methods specified in 9VAC25-31-490 unless an alternative has been specified in an existing sewage sludge permit.
- d. The monitoring data provided must include at least the following information for each parameter:
  - (1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;
  - (2) The analytical method used; and
  - (3) The method detection level.

7. If the applicant is a person who prepares sewage sludge, as defined in 9VAC25-31-500, the applicant must provide the following information:

- a. If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility.
- b. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:
  - (1) The name, mailing address, and location of the other facility;
  - (2) The total dry metric tons per 365-day period received from the other facility; and
  - (3) A description of any treatment processes occurring at the other facility, including blending activities and

treatment to reduce pathogens or vector attraction characteristics.

c. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

(1) Whether the Class A pathogen reduction requirements in 9VAC25-31-710 A or the Class B pathogen reduction requirements in 9VAC25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(2) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If sewage sludge from the applicant's facility meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through 8, and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away.

f. If sewage sludge from the applicant's facility is provided to another person who prepares sewage sludge, as defined in 9VAC25-31-500, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information for each facility receiving the sewage sludge:

(1) The name and mailing address of the receiving facility;

(2) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and

treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9VAC25-31-530 G; and

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge.

8. If sewage sludge from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 7 d, e or f of this subsection, the applicant must provide the following information:

a. The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

b. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located.

c. The following information for each land application site that has been identified at the time of permit application:

(1) The name (if any), and location for the land application site;

(2) The site's latitude and longitude to the nearest second, and method of determination;

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

(4) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9VAC25-31-500;

(7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(8) Whether either of the vector attraction reduction options of 9VAC25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(9) Other information that describes how the site will be managed, as specified by the board.

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d. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 9VAC25-31-540 B 2 will be applied, to ascertain whether bulk sewage sludge subject to 9VAC25-31-540 B 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 8 d (1) of this subsection, bulk sewage sludge subject to cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993.

e. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

(1) Describes the geographical area covered by the plan;

(2) Identifies the site selection criteria;

(3) Describes how the site(s) will be managed;

(4) Provides for advance notice to the board of specific land application sites and reasonable time for the board to object prior to land application of the sewage sludge and to notify persons residing on property bordering such sites for the purpose of receiving written comments from those persons for a period not to exceed 30 days. The department shall, based upon these comments, determine whether additional site-specific requirements should be included in the authorization for land application at the site; and

(5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site.

A request to increase the acreage authorized by the initial permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings.

9. An applicant for a permit authorizing the land application of sewage sludge shall provide to the department, and to each locality in which the applicant proposes to land apply sewage sludge, written evidence of financial responsibility, including both current liability and pollution insurance, or such other evidence of financial

responsibility as the board may establish by regulation in an amount not less than \$1 million per occurrence, which shall be available to pay claims for cleanup costs, personal injury, bodily injury and property damage resulting from the transport, storage and land application of sewage sludge in Virginia. The aggregate amount of financial liability to be maintained by the applicant shall be \$1 million for companies with less than \$5 million in annual gross revenue and shall be \$2 million for companies with \$5 million or more in annual gross revenue.

10. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(1) The name or number and the location of the active sewage sludge unit;

(2) The unit's latitude and longitude to the nearest second, and method of determination;

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of  $1 \times 10^{-7}$  cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site,

the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, and mailing address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:

(a) A description of any groundwater monitoring occurring at the active sewage sludge unit;

(b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;

(c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

11. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.

12. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;

c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Virginia Solid Waste Management Regulations, 9VAC20-80.

13. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.

14. At the request of the board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9VAC25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

15. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

Q. Applications for facilities with cooling water intake structures.

1. Application requirements. New facilities with new or modified cooling water intake structures. New facilities with cooling water intake structures as defined in 9VAC25-31-165 must report the information required under subdivisions 2, 3, and 4 of this subsection and under 9VAC25-31-165. Requests for alternative requirements under 9VAC25-31-165 must be submitted with the permit application.

2. Source water physical data. These include:

a. A narrative description and scaled drawings showing the physical configuration of all source water bodies used

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by the facility, including area dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;

b. Identification and characterization of the source water body's hydrological and geomorphologic features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and

c. Location maps.

### 3. Cooling water intake structure data. These include:

a. A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;

b. Latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;

c. A narrative description of the operation of each cooling water intake structure, including design intake flow, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;

d. A flow distribution and water balance diagram that includes all sources of water to the facility, recirculation flows and discharges; and

e. Engineering drawings of the cooling water intake structure.

4. Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan as required in 9VAC25-31-165 should be revised. This supporting information must include existing data if available. Existing data may be supplemented with data from newly conducted field studies. The information must include:

a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available and efforts made to identify sources of the data;

b. A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;

c. Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

d. Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

e. Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;

f. Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;

g. Documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and

h. If information requested in subdivision 4 of this subsection is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

Note 1: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of the VPDES application Form 2C are suspended as they apply to coal mines.

Note 2: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

a. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410 (2005)), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

b. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440 (2005)), and testing and reporting for all four fractions in all other subcategories of this industrial category.

c. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

Note 3: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

- a. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454 (2005)), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.
- b. Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.
- c. Testing and reporting for the acid, base/neutral and pesticide fractions in the petroleum refining industrial category.
- d. Testing and reporting for the pesticide fraction in the Papergrade Sulfitate Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430 (2005)); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfitate Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).
- e. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

**9VAC25-31-290. Public notice of permit actions and public comment period.**

**A. Scope.**

- 1. The board shall give public notice that the following actions have occurred:
  - a. A draft permit has been prepared under 9VAC25-31-260 D;
  - b. A public hearing has been scheduled under 9VAC25-31-310; or
  - c. A VPDES new source determination has been made under 9VAC25-31-180.
- 2. No public notice is required when a request for permit modification, revocation and reissuance, or termination is

denied under 9VAC25-31-370 B. Written notice of that denial shall be given to the requester and to the permittee. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

3. Public notices may describe more than one permit or permit actions.

**B. Timing.**

- 1. Public notice of the preparation of a draft permit required under subsection A of this section shall allow at least 30 days for public comment.
- 2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

**C. Methods.** Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

- 1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive his or her rights to receive notice for any classes and categories of permits):
  - a. The applicant (except for VPDES general permits when there is no applicant);
  - b. Any other agency which the board knows has issued or is required to issue a VPDES, sludge management permit;
  - c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);
  - d. Any state agency responsible for plan development under § 208(b)(2), 208(b)(4) or § 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;
  - e. Any user identified in the permit application of a privately owned treatment works;
  - f. Persons on a mailing list developed by:
    - (1) Including those who request in writing to be on the list;
    - (2) Soliciting persons for area lists from participants in past permit proceedings in that area; and
    - (3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as EPA regional and state

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funded newsletters, environmental bulletins, or state law journals. (The board may update the mailing list from time to time by requesting written indication of continued interest from those listed. The board may delete from the list the name of any person who fails to respond to such a request.);

g. (1) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(2) Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. By publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

## D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

a. Name and address of the office processing the permit action for which notice is being given;

b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of VPDES draft general permits;

c. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for VPDES general permits when there is no application;

d. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application;

e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

f. A general description of the location of each existing or proposed discharge point and the name of the receiving water and the sludge use and disposal practice or practices and the location of each sludge treatment works treating domestic sewage and use or disposal sites

known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

g. Requirements applicable to cooling water intake structures under § 316 of the CWA, in accordance with 9VAC25-31-165; and

h. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 9VAC25-31-310 shall contain the following information:

a. Reference to the date of previous public notices relating to the permit;

b. Date, time, and place of the public hearing;

c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and

d. A concise statement of the issues raised by the persons requesting the public hearing.

3. Public notice of a VPDES draft permit for a discharge where a request for alternate thermal effluent limitations has been filed shall include:

a. A statement that the thermal component of the discharge is subject to effluent limitations incorporated in 9VAC25-31-30 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under § 301 or § 306 of the CWA;

b. A statement that an alternate thermal effluent limitation request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the law and § 316(a) of the CWA and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

c. If the applicant has filed an early screening request for a CWA § 316(a) variance, a statement that the applicant has submitted such a plan.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a, b, c, and d of this section shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any).

F. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the board shall :

1. Notify, in writing, the locality wherein the discharge or, as applicable, the associated land application of sewage sludge, or land disposal of treated sewage, stabilized sewage sludge or stabilized septage does or is proposed to take place of, at a minimum:

- a. The name of the applicant;
- b. The nature of the application and proposed discharge;
- c. The availability and timing of any comment period; and
- d. Upon request, any other information known to, or in the possession of, the board or the department regarding the applicant not required to be held confidential by this chapter.

2. Establish a date for a public meeting to discuss technical issues relating to proposals for land application of sewage sludge, or land disposal of treated sewage, stabilized sewage sludge or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The board shall not ~~consider the application for the proposal to be complete~~ issue the permit until the public meeting has been held and comment has been received from the local governing body, or until 30 days have lapsed from the date of the public meeting.

3. Except for land application of sewage sludge or land disposal of treated sewage, stabilized sewage sludge or stabilized septage, make a good faith effort to provide this same notice and information to (i) each locality and riparian property owner to a distance one-quarter mile downstream and one-quarter mile upstream or to the fall line whichever is closer on tidal waters and (ii) each locality and riparian property owner to a distance one-half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river at the point or proposed point of discharge is two miles wide or greater, the riparian property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the commissioners of the revenue or the tax assessor's office of the affected jurisdictions upon request by the board.

4. For a site that is to be added to an existing permit authorizing land application of sewage sludge, notify persons residing on property bordering such site and receive written comments from those persons for a period not to exceed 30 days. Based upon the written comments, the department shall determine whether additional site-

specific requirements should be included in the authorization for land application at the site.

G. Before issuing any permit, if the board finds that there are localities particularly affected by the permit, the board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged; and

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the board for at least 15 days after any public hearing on the permit, unless the board votes to shorten the period. For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities.

VA.R. Doc. No. R09-2012; Filed August 11, 2009, 4:14 p.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (amending 9VAC25-32-140, 9VAC25-32-240).**

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

**Effective Date:** September 30, 2009.

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

### Summary:

*This action implements the 2009 legislative changes to the State Water Control Law as a result of Chapter 42 of the 2009 Acts of Assembly. These changes clarify public notice requirements for permit applications for land application acreage increases of 50% or more and clarify when a permit for land application is issued in relation to the*



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*public meeting and public comment opportunity on the application. The resulting regulatory changes provide that an application for any permit amendments to increase the acreage authorized by the initial permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings and provide that the board shall not issue the permit for land disposal until the public meeting has been held and comment has been received from the local governing body, or until 30 days have lapsed from the date of the public meeting.*

## Part III Public Involvement

### **9VAC25-32-140. Public notice of VPA permit action and public comment period.**

A. Every draft VPA permit shall be given public notice, paid for by the owner, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the pollutant management activity.

B. Interested persons shall have a period of at least 30 days following the date of the initial newspaper public notice to submit written comments on the tentative decision and to request a public hearing.

C. The contents of the public notice of an application for a VPA permit shall include:

1. The name and address of the applicant. If the location of the pollutant management activity differs from the address of the applicant the notice shall also state the location of the pollutant management activity including storage and land application sites;
2. A brief description of the business or activity conducted at the facility;
3. A statement of the tentative determination to issue or deny a VPA permit;
4. A brief description of the final determination procedure;
5. The address and phone number of a specific person at the state office from whom further information may be obtained; and
6. A brief description of how to submit comments and request a hearing.

D. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

E. Upon receipt of an application for a permit or for a modification of a permit, the board shall :

1. Cause to be notified, in writing, the locality wherein the pollutant management activity does or is proposed to take place. This notification shall, at a minimum, include:

- a. The name of the applicant;
- b. The nature of the application and proposed pollutant management activity; and
- c. Upon request, any other information known to, or in the possession of, the board or the department regarding the application except as restricted by 9VAC25-32-150.

2. Establish a date for a public meeting to discuss technical issues relating to proposals for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The board shall not ~~consider the application for the proposal to be complete~~ issue the permit until the public meeting has been held and comment has been received from the local governing body or until 30 days have lapsed from the date of the public meeting.

F. Before issuing any permit, if the board finds that there are localities particularly affected by the permit, the board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged; and
2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the board for at least 15 days after any public hearing on the permit, unless the board votes to shorten the period. For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities.

G. When a site is to be added to an existing permit authorizing land application of biosolids, the department shall notify persons residing on property bordering such site, and shall receive written comments from those persons for a period not to exceed 30 days. Based upon the written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the site.

**9VAC25-32-240. Minor modification.**

A. Upon request of the permittee, or upon board initiative with the consent of the permittee, minor modifications may be made in the VPA permit without following the public involvement procedures.

B. Minor modification may only:

1. Correct typographical errors;
2. Require reporting by the permittee at a frequency other than that required in the VPA permit;
3. Change an interim compliance date in a schedule of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date;
4. Allow for a change in name, ownership or operational control when the board determines that no other change in the VPA permit is necessary, provided that a written agreement containing a specific date for transfer of VPA permit responsibility, coverage and liability from the current to the new permittee has been submitted to the department;
5. Delete the listing of a land application site when the pollutant management activity is terminated and does not result in an increase of pollutants which would exceed VPA permit limitations;
6. Reduce VPA permit limitations to reflect a reduction in the permitted activity when such reduction results from a shutdown of processes or pollutant generating activities or from connection of the permitted activity to a POTW;
7. Change plans and specifications where no other changes in the VPA permit are required;
8. Authorize treatment facility expansions, production increases or process modifications which will not cause a significant change in the quantity of pollutants being managed or a significant change in the nature of the pollutant management activity; or
9. Delete VPA permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated.

C. An application for a any permit amendment amendments to increase the acreage authorized by the initial permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings.

VA.R. Doc. No. R09-2009; Filed August 11, 2009, 4:14 p.m.



## TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

### STATE CORPORATION COMMISSION

#### Proposed Regulation

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

**Title of Regulation:** **10VAC5-200. Payday Lending (amending 10VAC5-200-100).**

**Statutory Authority:** §§ 6.1-458 and 12.1-13 of the Code of Virginia.

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

**Public Comments:** Public comments may be submitted until 5 p.m. on October 30, 2009.

**Agency Contact:** E. J. Face, Jr., Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9659, FAX (804) 371-9416, or email joe.face@scc.virginia.gov.

**Summary:**

*The proposed changes incorporate certain provisions of Chapters 784 and 860 of the 2009 Acts of Assembly that relate to the conduct of open-end credit business from payday lending offices. The proposal also incorporates a provision of § 6.1-439 of the Code of Virginia by providing that a person registered or required to be registered as a check casher under Chapter 17 (§ 6.1-432 et seq.) of Title 6.1 of the Code of Virginia is prohibited from making loans unless the person is licensed under, and the loans are made in accordance with, the Payday Loan Act. Subsection B of 10VAC5-200-100 specifies additional findings that the State Corporation Commission (commission) would need to make before approving an application to conduct other business in a licensee's payday lending offices. Subsection E of 10VAC5-200-100 adds a set of uniform conditions that would generally be applicable to the conduct of other business in payday lending offices. Subsections F through K of 10VAC5-200-100 prescribe the conditions that would be attached to specific types of other businesses, such as making open-end auto title loans, acting as an agent of a money transmitter, and providing tax preparation services. Under subsection M of 10VAC5-200-100, the conditions set forth in the regulation would generally supersede the conditions established in the approval orders that were previously entered by the commission. Lastly, subsection O of 10VAC5-200-100 is added to expressly provide that*

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*failure to comply with applicable laws or conditions may result in revocation of a payday lender's other business authority, fines, suspension, or revocation of a payday lender's license, or other appropriate enforcement action.*

AT RICHMOND, AUGUST 4, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. BFI-2009-00344

Ex Parte: In the matter of adopting  
rules for the conduct of other business  
in payday lending offices

## ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 6.1-458 of the Code of Virginia provides that the Commission shall promulgate such rules and regulations as it deems appropriate to effect the purposes of the Payday Loan Act ("Act"), § 6.1-444 et seq. of the Code of Virginia. The regulations issued by the Commission pursuant to the Act are set forth in Title 10 of the Virginia Administrative Code.

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to the regulation set forth at 10 VAC 5-200-100 of the Virginia Administrative Code, entitled "Other business in payday lending offices." The impetus for the proposed amendments was legislation enacted during the 2009 session of the Virginia General Assembly. Chapters 784 and 860 of the 2009 Acts of Assembly provide in pertinent part that licensed payday lenders are generally prohibited from engaging in the extension of credit under an open-end credit or similar plan described in § 6.1-330.78 of the Code of Virginia, and third parties are generally prohibited from engaging in the extension of credit under an open-end credit or similar plan described in § 6.1-330.78 at any office, suite, room, or place of business where a licensed payday lender conducts the business of making payday loans. The legislation does not prohibit an extension of credit under an open-end credit or similar plan if it is secured by a security interest in a motor vehicle.

Since the legislation enacted by the General Assembly impacts § 6.1-463 of the Code of Virginia and 10 VAC 5-200-100, the Bureau is proposing that the Commission modify its other business regulation by establishing a set of uniform conditions that would be applicable to licensed payday lenders and third parties making open-end loans secured by a security interest in a motor vehicle from one or

more payday lending offices. The Bureau is also proposing that the Commission incorporate into its regulation the conditions that have been attached to other types of businesses that may be conducted from payday lending offices, such as acting as an agent of a money transmitter or providing tax preparation services. The conditions identified in the proposed regulation are derived from Commission orders approving the conduct of other business in payday lending offices. If adopted by the Commission, the conditions in the regulation would generally supersede the conditions set forth in the approval orders that were entered by the Commission prior to the effective date of the amended regulation.

Apart from setting forth by regulation the conditions applicable to the conduct of other business in payday lending offices, the Bureau is also proposing to amend 10 VAC 5-200-100 by specifying additional findings that the Commission would need to make before approving an application to conduct other business in a licensee's payday lending offices. The Bureau is also proposing to expressly provide that failure to comply with applicable laws or conditions may result in revocation of a licensee's other business authority, fines, suspension or revocation of a payday lender's license, or other appropriate enforcement action.

While interested persons may submit comments on any aspect of the proposed regulation, commenters addressing the provisions relating to open-end loans secured by a security interest in a motor vehicle are specifically requested to submit comments on (i) whether a licensee or third party making such loans should be required to record its security interest with the Department of Motor Vehicles, and (ii) whether a licensee or third party should be prohibited from entering into an open-end credit plan secured by a prospective borrower's motor vehicle if the motor vehicle is already subject to a purchase money security interest or other outstanding lien.

The Commission is of the opinion that the proposed amendments submitted by the Bureau should be considered for adoption with an effective date of December 1, 2009.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation entitled "Other business in payday lending offices," which amends 10 VAC 5-200-100, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment or request a hearing on the proposed regulation shall file such comments or hearing request on or before October 30, 2009, in writing with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118 and shall refer to Case No. BFI-2009-00344. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. Interested persons desiring to submit

comments electronically may do so by following the instructions available at the Commission's website, <http://www.scc.virginia.gov/case>.

(3) If no written request for a hearing on the proposed regulation is filed on or before October 30, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed regulation, may adopt the proposed regulation as submitted by the Bureau.

(4) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposed regulation, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make this Order and the attached proposed regulation available on the Commission's website, <http://www.scc.virginia.gov/case>.

AN ATTESTED COPY hereof, together with a copy of the proposed regulation, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall mail a copy of this Order, together with the proposed regulation, to all licensed payday lenders and other interested parties designated by the Bureau.

**10VAC5-200-100. Other business in payday lending offices.**

A. This section governs the conduct of any business other than payday lending where a licensed payday lending business is conducted. As used in this section, the term "other business operator" refers to a licensed payday lender or third party, including an affiliate of the licensed payday lender, who conducts or wants to conduct other business from one or more payday lending offices.

1. Pursuant to § 6.1-463 of the Code of Virginia, a licensee shall not conduct the business of making payday loans at any office, suite, room, or place of business where any other business is solicited or conducted, except a registered check cashing business or such other business as the commission determines should be permitted, and subject to such conditions as the commission deems necessary and in the public interest.

2. Notwithstanding any provision of this section or order entered by the commission prior to December 1, 2009, the following other businesses shall not be conducted from any office, suite, room, or place of business where a licensed payday lending business is conducted:

- a. Selling insurance or enrolling borrowers under group insurance policies.
- b. Making loans under an open-end credit or similar plan as described in § 6.1-330.78 of the Code of Virginia unless the loans are secured by a security interest in a motor vehicle as this term is defined in § 46.2-100 of the Code of Virginia.

3. Pursuant to § 6.1-439 of the Code of Virginia, no person registered or required to be registered as a check casher under Chapter 17 (§ 6.1-432 et seq.) of Title 6.1 of the Code of Virginia shall make loans from any location, including an office, suite, room, or place of business where a licensed payday lending business is conducted, unless the person is licensed under the Act and the loans are made in accordance with the Act.

B. Upon the filing of a written application, provision of any information relating to the application as the Commissioner of Financial Institutions may require, and payment of the fee required by law, and subject to approval by the commission and the imposition of such conditions as the commission deems necessary and in the public interest, other business may be conducted in a location where a licensed payday lending business is conducted if the commission determines finds that ~~such~~ (i) the proposed other business is financial in nature, ~~except the selling of insurance or the enrolling of borrowers under group insurance policies;~~ (ii) the proposed other business is in the public interest; (iii) the other business operator has the general fitness to warrant belief that the business will be operated in accordance with law; and (iv) the applicant has been operating its payday lending business in accordance with the Act and this chapter. The commission shall in its discretion determine whether a proposed other business is "financial in nature," and shall not be obliged to consider the meaning of this term under federal law. A business is financial in nature if it primarily deals with the offering of debt, money or credit, or services directly related thereto.

C. ~~Nothing contained herein shall apply to any nonfinancial~~ Nonfinancial other business may be conducted pursuant to any order of the commission entered on or before June 15, 2004. However, this subsection shall not be construed to authorize any person to begin engaging in such other business at payday lending locations where such other business was not conducted as of June 15, 2004.

D. Written evidence of commission approval of each other business conducted by ~~any payday lender licensee~~ an other business operator should be maintained at each location where such other business is conducted.

E. Except as otherwise provided in subsection N of this section, all approved other businesses in payday lending offices shall be conducted in accordance with the following conditions:

- 1. The licensee shall not make a payday loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made by the other business operator at the licensee's payday lending offices.

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2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.

3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.

4. The licensee shall not make a payday loan or vary the terms of a payday loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a payday loan from the licensee.

5. The other business operator shall maintain books and records for its other business separate and apart from the licensee's payday lending business and in a different location within the licensee's payday lending offices. The bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.

F. If a licensee (i) received commission authority for an other business operator to conduct open-end credit business from the licensee's payday lending offices, or (ii) receives commission authority for an other business operator to conduct open-end auto title lending business from the licensee's payday lending offices, the following additional conditions shall be applicable:

1. Any loan made by the other business operator pursuant to an open-end credit agreement shall be secured by a security interest in a motor vehicle, as defined in § 46.2-100 of the Code of Virginia.

2. The licensee shall not make a payday loan to a person if (i) the person has an outstanding open-end loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full an open-end loan from the other business operator.

3. The other business operator shall not make an open-end loan to a person pursuant to an open-end credit agreement if (i) the person has an outstanding payday loan from the licensee, or (ii) on the same day the person repaid or satisfied in full a payday loan from the licensee.

4. The other business operator and the licensee shall not make an open-end loan and a payday loan contemporaneously or in response to a single request for a loan or credit.

5. The licensee and other business operator shall provide each applicant for a payday loan or open-end credit plan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's payday lending offices along with the corresponding annual percentage rate, interest rate, and other costs associated with each loan product.

G. If a licensee received or receives commission authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the licensee's payday lending offices, the other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 12 (§ 6.1-370 et seq.) of Title 6.1 of the Code of Virginia. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

H. If a licensee received or receives commission authority for an other business operator to conduct the business of (i) tax preparation and electronic tax filing services, or (ii) facilitating third party tax preparation and electronic tax filing services, from the licensee's payday lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make, arrange, or broker a payday loan that is secured by an interest in a borrower's tax refund, or in whole or in part by (i) any other assignment of income payable to a borrower, or (ii) any assignment of an interest in a borrower's account at a depository institution. This condition shall not be construed to prohibit the licensee from making a payday loan that is secured solely by a check payable to the licensee drawn on a borrower's account at a depository institution.

2. The other business operator shall not engage in the business of (i) accepting funds for transmission to the Internal Revenue Service or other government instrumentalities, or (ii) receiving tax refunds for delivery to individuals, unless licensed or exempt from licensing under Chapter 12 (§ 6.1-370 et seq.) of Title 6.1 of the Code of Virginia.

I. If a licensee received or receives commission authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the licensee's payday lending offices, the following additional conditions shall be applicable:

1. The other business operator shall not facilitate or arrange a tax refund anticipation loan or tax refund payment to enable a person to pay any amount owed to the licensee as a result of a payday loan transaction.

2. The other business operator and the licensee shall not facilitate or arrange a tax refund anticipation loan or tax refund payment and make a payday loan contemporaneously or in response to a single request for a loan or credit.

3. The licensee shall not make, arrange, or broker a payday loan that is secured by an interest in a borrower's tax refund, or in whole or in part by (i) any other assignment of income payable to a borrower, or (ii) any assignment of an interest in a borrower's account at a depository institution. This condition shall not be construed to prohibit the licensee from making a payday loan that is secured solely by a check payable to the licensee drawn on a borrower's account at a depository institution.

4. The other business operator shall not engage in the business of receiving tax refunds or tax refund payments for delivery to individuals unless licensed or exempt from licensing under Chapter 12 (§ 6.1-370 et seq.) of Title 6.1 of the Code of Virginia.

5. The licensee and other business operator shall provide each applicant for a payday loan or tax refund anticipation loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's payday lending offices along with the corresponding annual percentage rate, interest rate, and other costs associated with each loan product.

J. If a licensee received or receives commission authority for an other business operator to conduct a consumer finance business from the licensee's payday lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make a payday loan to a person if (i) the person has an outstanding consumer finance loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the other business operator.

2. The other business operator shall not make a consumer finance loan to a person if (i) the person has an outstanding payday loan from the licensee, or (ii) on the same day the person repaid or satisfied in full a payday loan from the licensee.

3. The licensee and other business operator shall not make a payday loan and a consumer finance loan contemporaneously or in response to a single request for a loan or credit.

4. The licensee and other business operator shall provide each applicant for a payday loan or consumer finance loan with a separate disclosure, signed by the applicant, that

clearly identifies all of the loan products available in the licensee's payday lending offices along with the corresponding annual percentage rate, interest rate, and other costs associated with each loan product.

K. If a licensee received or receives commission authority for an other business operator to conduct the business of operating an automated teller machine from the licensee's payday lending offices, the other business operator shall not charge a fee or receive other compensation in connection with the use of its automated teller machine by a person when the person is withdrawing funds in order to make a payment on a payday loan from the licensee.

L. The commission may impose any additional conditions upon the conduct of other business in payday lending offices that it deems necessary and in the public interest.

M. Except as otherwise provided in subsection N of this section, the conditions set forth or referred to in subsections E through L of this section shall supersede the conditions set forth in the commission's approval orders entered prior to December 1, 2009.

N. If prior to December 1, 2009, a licensee received commission authority for an other business operator to conduct a business not identified in subsections F through K of this section, the conditions that were imposed by the commission at the time of the approval shall remain in full force and effect.

O. Failure by a licensee or other business operator to comply with any provision of this section or any condition imposed by the commission, or failure by a licensee to comply with the Act, this chapter, or any other law or regulation applicable to the conduct of the licensee's business, may result in the revocation of the authority to conduct other business, fines, license suspension, license revocation, or other appropriate enforcement action.

VA.R. Doc. No. R09-2079; Filed August 10, 2009, 8:59 a.m.



**TITLE 12. HEALTH**

**STATE BOARD OF HEALTH**

**Proposed Regulation**

**REGISTRAR'S NOTICE:** The State Board of Health is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 23 of the Code of Virginia, which excludes the State Board of Health when promulgating regulations pursuant to § 35.1-14, which conform, insofar as practicable, with the federal Food and Drug Administration's Food Code. Pursuant to § 35.1-14 E of the Code of Virginia, this regulatory action is exempt from portions of the Administrative Process Act provided the State Board of

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Agriculture and Consumer Services adopts the same version and both agency's regulations have the same effective date. Both agencies are working toward that goal.

**Title of Regulation:** 12VAC5-421. **Food Regulations (amending 12VAC5-421-10, 12VAC5-421-50, 12VAC5-421-60, 12VAC5-421-70, 12VAC5-421-80, 12VAC5-421-90, 12VAC5-421-100, 12VAC5-421-140, 12VAC5-421-180, 12VAC5-421-360, 12VAC5-421-370, 12VAC5-421-400, 12VAC5-421-410, 12VAC5-421-430, 12VAC5-421-440, 12VAC5-421-450, 12VAC5-421-490, 12VAC5-421-500, 12VAC5-421-540, 12VAC5-421-570, 12VAC5-421-680, 12VAC5-421-700, 12VAC5-421-730, 12VAC5-421-740, 12VAC5-421-760, 12VAC5-421-780, 12VAC5-421-790, 12VAC5-421-800, 12VAC5-421-820, 12VAC5-421-830, 12VAC5-421-850, 12VAC5-421-860, 12VAC5-421-870, 12VAC5-421-900, 12VAC5-421-950, 12VAC5-421-980, 12VAC5-421-1200, 12VAC5-421-1230, 12VAC5-421-1260, 12VAC5-421-1310, 12VAC5-421-1420, 12VAC5-421-1550, 12VAC5-421-1560, 12VAC5-421-1690, 12VAC5-421-1890, 12VAC5-421-1980, 12VAC5-421-2040, 12VAC5-421-2190, 12VAC5-421-2230, 12VAC5-421-2280, 12VAC5-421-2310, 12VAC5-421-2520, 12VAC5-421-2600, 12VAC5-421-2630, 12VAC5-421-2790, 12VAC5-421-2810, 12VAC5-421-2920, 12VAC5-421-2950, 12VAC5-421-2960, 12VAC5-421-3020, 12VAC5-421-3030, 12VAC5-421-3040, 12VAC5-421-3045, 12VAC5-421-3080, 12VAC5-421-3130, 12VAC5-421-3180, 12VAC5-421-3240, 12VAC5-421-3460, 12VAC5-421-3750, 12VAC5-421-3815, 12VAC5-421-3860, 12VAC5-421-4040, 12VAC5-421-4050, 12VAC5-421-4070; repealing 12VAC5-421-110, 12VAC5-421-120, 12VAC5-421-150, 12VAC5-421-750, 12VAC5-421-1020, 12VAC5-421-1030, 12VAC5-421-1440, 12VAC5-421-1880, 12VAC5-421-2510, 12VAC5-421-2590, 12VAC5-421-3010, 12VAC5-421-3050, 12VAC5-421-3060, 12VAC5-421-3110, 12VAC5-421-3120, 12VAC5-421-3160).**

**Statutory Authority:** §§ 35.1-11 and 35.1-14 of the Code of Virginia.

**Public Hearing Information:**

October 21, 2009 - 2 p.m. - Virginia Department of Health, James Madison Building, 109 Governor Street, Fifth Floor Conference Room, Richmond, VA

**Public Comments:** Public comments may be submitted until 5 p.m. on October 30, 2009.

**Agency Contact:** Gary L. Hagy, Director of Food and General Environmental Services, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7455, TTY (800) 828-1120, or email gary.hagy@vdh.virginia.gov.

**Summary:**

*The Food Regulations establish minimum sanitary standards for operating restaurants. Those standards include the safe and sanitary maintenance, storage,*

*operation, and use of equipment; the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods; procedures for vector and pest control; requirements for toilet and cleansing facilities for employees and customers; requirements for appropriate lighting and ventilation not otherwise provided for in the Uniform Statewide Building Code; requirements for an approved water supply and sewage disposal system; personal hygiene standards for employees, particularly those engaged in food handling; and the appropriate use of precautions to prevent the transmission of communicable diseases. The regulations also inform potential restaurant owners or operators how to obtain a permit to operate a restaurant from the department. The regulations are being amended to be consistent with the current 2007 supplement to the 2005 Food and Drug Administration's (FDA) Food Code. The current Food Regulations are based on the 2003 Supplement to the 2001 FDA Food Code. These changes are also being proposed concurrently with the Virginia Department of Agriculture and Consumer Services (VDACS) adoption of the 2007 Supplement to the 2005 FDA Food Code. Pursuant to § 35.1-14 C and E of the Code of Virginia, this action is exempt from portions of the Administrative Process Act (APA), provided VDACS adopts the same version and both agency's regulations have the same effective date. Both agencies are working toward that end. Both VDH and VDACS previously adopted the 2003 supplement to the 2001 FDA Food Code with an effective date of October 16, 2007.*

Part I

Definitions, Purpose and Administration

**12VAC5-421-10. Definitions.**

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

"Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards that certify individuals. "Accredited program" refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, recertification, discipline and grievance procedures; and test development and administration. "Accredited program" does not refer to training functions or educational programs.

"Additive" means either a (i) "food additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(s) and 21 CFR Part 170 or (ii) "color additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(t) and 21 CFR Part 70.

"Adulterated" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 402.

"Agent" means a legally authorized representative of the owner.

"Agent of the commissioner" means the district or local health director, unless otherwise stipulated.

"Approved" means acceptable to the department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

"Approved water supply" means a waterworks which has a valid waterworks operation permit from the department or a nonpublic water supply which is evaluated, tested and if found in reasonable compliance with the construction standards of the Private Well Regulations (12VAC5-630) and the bacteriological water quality standards of the Virginia Waterworks Regulations (12VAC5-590), accepted and approved by the director or the director's designee.

"Asymptomatic" means without obvious symptoms; not showing or producing indication of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice. Asymptomatic includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

" $a_w$ " means water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol  $a_w$ .

"Balut" means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

"Bed and breakfast" means a tourist home that serves meals.

"Beverage" means a liquid for drinking, including water.

"Board" means the State Board of Health.

"Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption.

"Building official" means a representative of the Department of Housing and Community Development.

"Casing" means a tubular container for sausage products made of either natural or artificial (synthetic) material.

"Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

"CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent

solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. CIP does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

"CFR" means Code of Federal Regulations. Citations in these regulations to the CFR refer sequentially to the title, part, and section numbers, such as 21 CFR 178.1010 refers to Title 21, Part 178, Section 1010.

"Code of Federal Regulations" means the compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government which:

1. Is published annually by the U.S. Government Printing Office; and
2. Contains FDA rules in 21 CFR, USDA rules in 7 CFR and 9 CFR, EPA rules in 40 CFR, and Wildlife and Fisheries Rules in 50 CFR.

"Commingle" means:

1. To combine shellstock harvested on different days or from different growing areas as identified on the tag or label; or
2. To combine shucked shellfish from containers with different container codes or different shucking dates.

"Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing. "Comminuted" includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

"Commissary" means a catering establishment, restaurant, or any other place in which food, food containers or supplies are kept, handled, prepared, packaged or stored for distribution to satellite operations.

"Commissioner" means the State Health Commissioner, his duly designated officer or his agent.

"Conditional employee" means a potential food employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

"Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative organism or chemical and



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epidemiological analysis implicates the food as the source of the illness.

"Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

"Corrosion-resistant materials" means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

"Counter-mounted equipment" means equipment that is not easily movable and is designed to be mounted off the floor on a table, counter, or shelf.

"Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

"Critical item" means a provision of these regulations that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental degradation.

"Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

"Dealer" means a person who is authorized by a shellfish control authority for the activities of a shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.

"Delicatessen" means a store where ready to eat products such as cooked meats, prepared salads, etc. are sold for off-premises consumption.

"Department" means the State Health Department.

"Director" means the district or local health director.

"Disclosure" means a written statement that clearly identifies the animal foods that are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens in their entirety, or items that contain an ingredient that is raw, undercooked, or otherwise being processed to eliminate pathogens.

"Drinking water" means water that meets the water quality standards for bacteria of the Virginia Waterworks Regulations (12VAC5-590). Drinking water is traditionally known as "potable water." Drinking water includes the term water except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

"Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

"Easily cleanable" means a characteristic of a surface that:

1. Allows effective removal of soil by normal cleaning methods;
2. Is dependent on the material, design, construction, and installation of the surface; and
3. Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

"Easily cleanable" includes a tiered application of the criteria that qualify the surface as easily cleanable as specified above to different situations in which varying degrees of cleanability are required such as:

1. The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or
2. The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

"Easily movable" means:

1. Portable (weighing 30 pounds or less); mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and
2. Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

"Egg" means the shell egg of ~~the domesticated chicken, turkey, duck, goose, or guinea.~~ avian species such as chicken, duck, goose, guinea, quail, ratites, or turkey. Egg does not include a balut; egg of the reptile species such as alligator; or an egg product.

"Egg product" means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen, or liquid eggs. Egg product does not include food that contains eggs only in a relatively small proportion such as cake mixes.

"Employee" means the permit holder, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

"Enterohemorrhagic *Escherichia coli* (EHEC)" means *E.coli* that cause hemorrhagic colitis, meaning bleeding enterically or bleeding from the intestine. The term is typically used in association with *E.coli* that have the capacity to produce Shiga toxins and to cause attaching and effacing lesion in the intestine. EHEC is a subset of STEC, whose members produce additional virulence factors. Infections with EHEC may be asymptomatic but are classically associated with bloody diarrhea (hemorrhagic colitis) and hemolytic uremic syndrome (HUS) or thrombotic thrombocytopenic purpura (TTP). Examples of serotypes of EHEC include: *E.coli* O157:H7; *E.coli* O157:NM; *E.coli* O26:H11; *E.coli* O145:NM; *E.coli* O103:H2; or *E.coli* O111:NM. Also see Shiga toxin-producing *E.coli*.

"EPA" means the U.S. Environmental Protection Agency.

"Equipment" means an article that is used in the operation of a food establishment. "Equipment" includes, but is not limited to, items such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

"Exclude" means to prevent a person from working as a food employee in a food establishment or entering a food establishment ~~except for those areas open to the general public~~ as an employee.

"F" means degrees Fahrenheit.

"FDA" means the U.S. Food and Drug Administration.

"Fish" means: fresh or saltwater finfish, crustaceans, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals; all mollusks, if such animal life is intended for human consumption; and, includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.

"Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

"Foodborne disease outbreak" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

"Food-contact surface" means a surface of equipment or a utensil with which food normally comes into contact, or a surface of equipment or a utensil from which food may drain, drip, or splash into a food, or onto a surface normally in contact with food.

"Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

"Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption (i) such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and (ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

"Food establishment" includes (a) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location; (b) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food; and (c) a facility that does not meet the exemption criteria identified in subdivision 6 of this definition or a facility that meets the exemption requirements but chooses to be regulated under these regulations.

"Food establishment" does not include:

1. An establishment that offers only prepackaged foods that are not potentially hazardous;
2. A produce stand that only offers whole, uncut fresh fruits and vegetables;
3. A food processing plant; including those that are located on the premises of a food establishment;
4. A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;
5. An area where food that is prepared as specified in subdivision 4 above is sold or offered for human consumption;
6. A kitchen in a private home, such as, but not limited to, a family day-care provider or a home for adults, serving 12 or fewer recipients; or a bed-and-breakfast operation that prepares and offers food only to guests if the home is owner occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is, by these regulations, exempt from this chapter; or

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7. A private home that receives catered or home-delivered food.

For the purpose of implementing this chapter, the following are also exempt from the definition of a "food establishment" in this chapter, as defined in §§ 35.1-25 and 35.1-26 of the Code of Virginia:

1. Boarding houses that do not accommodate transients;
2. Cafeterias operated by industrial plants for employees only;
3. Churches, fraternal, school and social organizations and volunteer fire departments and rescue squads that hold dinners and bazaars not more than one time per week and not in excess of two days duration at which food prepared in homes of members or in the kitchen of the church or organization and is offered for sale to the public;
4. Grocery stores, including the delicatessen that is a part of a grocery store, selling exclusively for off-premises consumption and places manufacturing or selling packaged or canned goods;
5. Churches that serve meals for their members as a regular part of their religious observance; and
6. Convenience stores or gas stations that are subject to the State Board of Agriculture and Consumer Services' Retail Food Establishment Regulations (2VAC5-585) or any regulations subsequently adopted and that (i) have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station and (ii) are not associated with a national or regional restaurant chain. Notwithstanding this exemption, such convenience stores or gas stations shall remain responsible for collecting any applicable local meals tax.

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and ~~does not provide food directly to a consumer~~ provides food for sale or distribution to other business entities such as food processing plants or food establishments. Food processing plant does not include a food establishment.

"Game animal" means an animal, the products of which are food, that is not classified as: cattle, sheep, swine, goat, horse, mule, or other equine in 9 CFR Part 301 Definitions, as poultry in 9 CFR Part 381 Poultry Products Inspection Regulations, or as Fish as defined in this section.

"Game animal" includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat and nonaquatic reptiles such as land snakes.

"Game animal" does not include ratites such as ostrich, emu, and rhea.

"General use pesticide" means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175.

"Grade A standards" means the requirements of the USPHS/FDA "Grade A Pasteurized Milk Ordinance" and "Grade A Condensed and Dry Milk Ordinance" with which certain fluid and dry milk and milk products comply.

"HACCP Plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

"Handwashing sink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of hands. Handwashing sink includes an automatic handwashing facility.

"Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

"Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical profession.

"Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

"Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are:

1. Immunocompromised, preschool age children, or older adults; and
2. Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

"Hot water" means water at a temperature of 100°F or higher unless otherwise stated.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

"Injected" means tenderizing a meat with deep penetration or injecting the meat such as with juices which may be referred to as "injecting," "pinning," or "stitch pumping."

During injection infectious or toxigenic microorganisms may be introduced from its surface to its interior.

"Juice;" ~~when used in the context of food safety,~~ means the aqueous liquid expressed or extracted from one or more fruits or vegetables, ~~purées purées~~ of the edible portions of one or more fruits or vegetables, ~~purées of the edible portions of one or more fruits or vegetables,~~ or any concentrate of such liquid or purée. ~~Juice includes juice as a whole beverage, an ingredient of a beverage and a purée as an ingredient of a beverage. Juice does not include, for purposes of HACCP, liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.~~

"Kitchenware" means food preparation and storage utensils.

"Law" means applicable local, state, and federal statutes, regulations, and ordinances.

"Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

"Major food allergen" means milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or a food ingredient that contains protein derived from one of these foods. Major food allergen does not include any highly refined oil derived from a major food allergen in this definition and any ingredient derived from such highly refined oil; or any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (P. L. 108-282).

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified under 12VAC5-421-330 A 3 and 4.

"mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

"Mobile food unit" means a food establishment that is mounted on wheels that is readily moveable from place to place and shall include pushcarts, trailers, trucks, or vans. There is no size limit to mobile food units but they must be mobile at all times during operation and must be on wheels (excluding boats in the water) at all times. The unit, all operations, and all equipment must be integral to and be within or attached to the unit.

"Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

"Occasional" means not more than one time per week, and not in excess of two days duration.

"Organization" means any one of the following:

1. A volunteer fire department or rescue squad or auxiliary unit thereof which has been recognized in accordance with § 15.2-955 of the Code of Virginia by an ordinance or resolution of the political subdivision where the volunteer fire department or rescue squad is located as being a part of the safety program of such political subdivision;
2. An organization operated exclusively for religious, charitable, community or educational purposes;
3. An association of war veterans or auxiliary units thereof organized in the United States;
4. A fraternal association or corporation operating under the lodge system;
5. A local chamber of commerce; or
6. A nonprofit organization that raises funds by conducting raffles which generate annual gross receipts of less than \$75,000, provided such gross receipts from the raffle, less expenses and prizes, are used exclusively for charitable, educational, religious or community purposes.

"Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.

"Permit" means a license issued by the regulatory authority that authorizes a person to operate a food establishment.

"Permit holder" means the entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person, and possesses a valid permit to operate a food establishment.

"Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.

"Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. Personal care items include items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

"pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

"Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

"Plumbing fixture" means a receptacle or device that is permanently or temporarily connected to the water

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distribution system of the premises and demands a supply of water from the system or discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

"Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

"Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:

1. Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
2. Pesticides which include substances such as insecticides and rodenticides;
3. Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants, paints, and personal care items that may be deleterious to health; and
4. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

~~"Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:~~

- ~~1. The rapid and progressive growth of infectious or toxigenic microorganisms;~~
- ~~2. The growth and toxin production of Clostridium botulinum; or~~
- ~~3. In raw shell eggs, the growth of Salmonella enteritidis.~~

~~"Potentially hazardous food" includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat treated or consists of raw seed sprouts; cut melons; and garlic in oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth as specified above in this definition.~~

~~Potentially hazardous food does not include:~~

- ~~1. An air cooled hard boiled egg with shell intact or a shell egg that is not hard boiled, but has been treated to destroy all viable Salmonellae;~~
- ~~2. A food with an  $a_w$  value of 0.85 or less;~~
- ~~3. A food with a pH level of 4.6 or below when measured at 24°C (75°F);~~

~~4. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;~~

~~5. A food for which a laboratory evidence demonstrates that the rapid and progressive growth of infectious and toxigenic microorganisms or the growth of Salmonella enteritidis in eggs or Clostridium botulinum cannot occur, such as a food that has an  $a_w$  and a pH that are above the levels specified in this definition and that may contain a preservative, other barrier to the growth of microorganism, or a combination of barriers that inhibit the growth of microorganisms; and~~

~~6. A food that does not support the growth of microorganisms as specified above in this definition even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.~~

"Potentially hazardous food (time/temperature control for safety food)" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation:

1. Potentially hazardous food (time/temperature control for safety food) includes an animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut tomatoes, or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support pathogenic microorganism growth or toxin formation; and except as specified in subdivision 2 of this definition, a food that because of the interaction of its  $A_w$  and pH values is designated as Product Assessment Required (PA) in Table A or B of this definition:

Table A. Interaction of pH and  $A_w$  for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged.

<u><math>A_w</math> values</u>	<u>pH values</u>		
	<u>4.6 or less</u>	<u>&gt;4.6-5.6</u>	<u>&gt;5.6</u>
<u>&lt;0.92</u>	<u>non-PHF*/non-TCS food**</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>
<u>&gt; 0.92-0.95</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>	<u>PA***</u>
<u>&gt;0.95</u>	<u>non-PHF/non-TCS food</u>	<u>PA</u>	<u>PA</u>

\*PHF means Potentially Hazardous Food

\*\*TCS means Time/Temperature Control for Safety Food

\*\*\*PA means Product Assessment required

Table B. Interaction of pH and Aw for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged.

Aw values	pH values			
	< 4.2	4.2 - 4.6	> 4.6 - 5.0	> 5.0
<0.88	non-PHF*/non-TCS food**	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food
0.88-0.90	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food	PA**
>0.90-0.92	non-PHF/non-TCS food	non-PHF/non-TCS food	PA	PA
>0.92	non-PHF/non-TCS food	PA	PA	PA

\*PHF means Potentially Hazardous Food

\*\*TCS means Time/Temperature Control for Safety Food

\*\*\*PA means Product Assessment required

2. Potentially hazardous food (time/temperature control for safety food) does not include:

- a. An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable *Salmonellae*;
- b. A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;
- c. A food that because of its pH or A<sub>w</sub> value, or interaction of A<sub>w</sub> and pH values, is designated as a non-PHF/non-TCS food in Table A or B of this definition;
- d. A food that is designated as Product Assessment required (PA) in Table A or B of this definition and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:
  - (1) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients,
  - (2) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging,

shelf-life and use, or temperature range of storage and use, or

(3) A combination of intrinsic and extrinsic factors; or

e. A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the subdivisions 2 a through 2 d of this definition even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

"Poultry" means any domesticated bird (chickens, turkeys, ducks, geese, or guineas), whether live or dead, as defined in 9 CFR Part 381, Poultry Products Inspection Regulations, and any migratory waterfowl, game bird, or squab such as pheasant, partridge, quail, grouse, guineas, or pigeon or squab whether live or dead, as defined in 9 CFR Part 362, Voluntary Poultry Inspection Regulations. "Poultry" does not include ratites.

"Premises" means the physical facility, its contents, and the contiguous land or property under the control of the permit holder; or the physical facility, its contents, and the land or property which are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

"Primal cut" means a basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank or veal breast.

"Public water system" has the meaning stated in 40 CFR Part 141, National Primary Drinking Water Regulations.

"Pushcart" means any wheeled vehicle or device other than a motor vehicle or trailer that may be moved with or without the assistance of a motor and that does not require registration by the department of motor vehicles. A pushcart is limited to the sale and/or service of hot dogs and frankfurter-like foods.

"Ratite" means a flightless bird such as an emu, ostrich, or rhea.

"Ready-to-eat food" means food that:

- 1. Is in a form that is edible without additional preparation to achieve food safety, as specified under 12VAC5-421-700 A through C, 12VAC5-421-710, or 12VAC5-421-730;
- 2. Is a raw or partially cooked animal food and the consumer is advised as specified under 12VAC5-421-700 D 1 and 2; or
- 3. Is prepared in accordance with a variance that is granted as specified under 12VAC5-421-700 D 1 and 2.

Ready-to-eat food may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

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"Ready-to-eat food" includes:

1. Raw animal food that is cooked as specified under 12VAC5-421-700, or frozen as specified under 12VAC5-421-730;
2. Raw fruits and vegetables that are washed as specified under 12VAC5-421-510;
3. Fruits and vegetables that are cooked for hot holding as specified under 12VAC5-421-720;
4. All potentially hazardous food that is cooked to the temperature and time required for the specific food under 12VAC5-421-700 and cooled as specified in 12VAC5-421-800;
5. Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present, are removed;
6. Substances derived from plants such as spices, seasonings, and sugar;
7. A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;
8. The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogen: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and
9. Food manufactured according to 21 CFR Part 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

"Reduced oxygen packaging" means the reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the ~~surrounding 21% oxygen atmosphere~~ atmosphere (approximately 21% at sea level); and a process as specified in this definition that involves a food for which ~~Clostridium botulinum is identified as a microbiological hazard in the final packaged form.~~ the hazards *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form. Reduced oxygen packaging includes:

1. Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;
2. Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may

change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;

3. Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement oxygen, nonrespiring food, and impermeable packaging material;

4. Cook chill packaging, in which cooked food is hot filled into impermeable bags that have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or

5. Sous vide packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

"Refuse" means solid waste not carried by water through the sewage system.

"Regulatory authority" means the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Health or their authorized representative having jurisdiction over the food establishment.

"Reminder" means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without being processed to eliminate pathogens.

"Reservice" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.

"Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles.

"Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR Part 590.

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 (pesticides classified for restricted use) and that is limited to use by or under the direct supervision of a certified applicator.

"Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

"Safe material" means an article manufactured from or composed of materials that shall not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food; an additive that is used as specified in § 409 or 706 of the Federal Food, Drug, and Cosmetic Act; or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

"Sanitization" means the application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for efficacy, yield a reduction of five logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

"Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

"Service animal" means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

"Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

"Shellfish control authority" means a state, federal, foreign, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce such as the Virginia Department of Health Division of Shellfish Sanitation.

"Shellstock" means raw, in-shell molluscan shellfish.

"Shiga toxin-producing *Escherichia coli*" (STEC) means any *E. coli* capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). ~~This includes, but is not limited to, *E. coli* reported as serotype O157:H7, O157:NM, and O157:H.~~ Examples of serotypes of STEC include both O157 and non-O157 *E. coli*. Also see *Enterohemorrhagic Escherichia coli*.

"Shucked shellfish" means molluscan shellfish that have one or both shells removed.

"Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles includes items such as wax

paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength and cleanability specifications contained in 12VAC5-421-960, 12VAC5-421-1080, and 12VAC5-421-1100 for multiuse utensils.

"Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -10°F (-23°C) to 25°F (-4°C) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.

"Smooth" means a food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number three stainless steel; a nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and a floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

"Substantial compliance" shall mean that details of equipment or structure design or construction and/or food preparation, handling, storage, transportation and/or cleaning procedures will not substantially affect health consideration or performance of the facility or its employees.

~~"Table mounted equipment" means equipment that is not easily movable and is designed to be mounted off the floor on a table, counter, or shelf.~~

"Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, tumblers; and plates.

"Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

"Temporary food establishment" means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

"USDA" means the U.S. Department of Agriculture.

"Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single service, or single use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices and probe-type price or identification tags used in contact with food.

"Variance" means a written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion



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of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

"Vending machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage and servicing areas on the premises that are used in conjunction with the vending machines.

"Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

"Whole-muscle, intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

## Part II Management and Personnel

### Article 1 Supervision

#### **12VAC5-421-50. Assignment of responsibility.**

~~The 1. Except as specified in subdivision 2 of this section, the permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.~~

~~2. In a food establishment with two or more separately permitted departments that are the legal responsibility of the same permit holder and that are located on the same premises, the permit holder may, during specific time periods when food is not being prepared, packaged, or served, designate a single person in charge who is present on the premises during all hours of operation, and who is responsible for each separately permitted food establishment on the premises.~~

#### **12VAC5-421-60. Demonstration of knowledge.**

Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, and the requirements of these regulations. The person in charge shall demonstrate this knowledge by: ~~being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program, or by responding correctly to the environmental health specialist's questions as they relate to the specific food operation. The areas of knowledge may include:~~

1. Complying with the Food Regulations by having no violations of critical items during the current inspection;

2. Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; or

3. Responding correctly to the environmental specialist's questions as they relate to the specific food operation. The areas of operation may include:

~~4. a.~~ Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;

~~2. b.~~ Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;

~~3. c.~~ Describing the symptoms associated with the diseases that are transmissible through food;

~~4. d.~~ Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food (time/temperature control for safety food) and the prevention of foodborne illness;

~~5. e.~~ Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;

~~6. f.~~ Stating the required food temperatures and times for safe cooking of potentially hazardous food (time/temperature control for safety food) including meat, poultry, eggs, and fish;

~~7. g.~~ Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food (time/temperature control for safety food);

~~8. h.~~ Describing the relationship between the prevention of foodborne illness and the management and control of the following:

~~a. (1)~~ Cross contamination,

~~b. (2)~~ Hand contact with ready-to-eat foods,

~~e. (3)~~ Handwashing, and

~~d. (4)~~ Maintaining the food establishment in a clean condition and in good repair;

i. Describing the foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction;

~~9. j.~~ Explaining the relationship between food safety and providing equipment that is:

~~a. (1)~~ Sufficient in number and capacity, and

~~b. (2)~~ Properly designed, constructed, located, installed, operated, maintained, and cleaned;

~~10.~~ k. Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;

~~11.~~ l. Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;

~~12.~~ m. Identifying poisonous or toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law;

~~13.~~ n. Identifying control points in the operation from purchasing through sale or service that may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this chapter;

~~14.~~ o. Explaining the details of how the person in charge and food employees comply with a HACCP plan if such a plan is a voluntary agreement between the regulatory authority and the establishment; and

~~15.~~ p. Explaining the responsibilities, rights, and authorities assigned by this chapter to the:

a. (1) Food employee,

b. (2) Person in charge, and

e. (3) Regulatory authority; and

q. Explaining how the person in charge, food employees, and conditional employees comply with reporting responsibilities and the exclusion or restriction of food employees.

**12VAC5-421-70. Person Duties of person in charge.**

The person in charge shall ensure that:

1. Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under 12VAC5-421-2990;

2. Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;

3. Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with these regulations;

4. Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;

5. Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;

6. Employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures;

7. Employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within four hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;

~~8. (Reserved);~~ Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under 12VAC5-421-930 that the food is not cooked sufficiently to ensure its safety;

9. Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing;

10. Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets;

~~11. Employees~~ Except when approval is obtained from the regulatory authority as specified in 12VAC5-421-450 B, employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment; and

12. Employees are properly trained in food safety as it relates to their assigned duties; and

13. Food employees and conditional employees are informed of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under 12VAC5-421-80.

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## Article 2 Employee Health

### **12VAC5-421-80. Responsibility of the permit holder, person in charge to require reporting by food employees and applicants, and conditional employees.**

The permit holder shall require food employee applicants to whom a conditional offer of employment is made and food employees to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. A food employee or applicant shall report the information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness specified in subdivision 2 of this section, if the food employee or applicant:

1. Is diagnosed with an illness due to:
  - a. *Salmonella typhi*;
  - b. *Shigella* spp.;
  - c. *Escherichia coli* O157:H7, or
  - d. Hepatitis A virus;
2. Has a symptom caused by illness, infection, or other source that is:
  - a. Associated with an acute gastrointestinal illness such as (i) diarrhea; (ii) fever; (iii) vomiting; (iv) jaundice; or (v) sore throat with fever; or
  - b. A lesion containing pus such as a boil or infected wound that is open or draining and is:
    - (1) On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;
    - (2) On exposed portions of the arms, unless the lesion is protected by an impermeable cover; or
    - (3) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;
3. Had a past illness from an infectious agent specified in subsection A of this section; or
4. Meets one or more of the following high-risk conditions:
  - a. Is suspected of causing, or being exposed to, a confirmed disease outbreak caused by *S. typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus including an outbreak at an event such as a family meal, church supper, or festival because the food employee or applicant:
    - (1) Prepared food implicated in the outbreak,
    - (2) Consumed food implicated in the outbreak, or

(3) Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent, or

b. Lives in the same household as a person who is diagnosed with a disease caused by *S. typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus, or

e. Lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by *S. typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus.

A. The permit holder shall require food employees and conditional employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food. A food employee or conditional employee shall report the information in a manner that allows the person in charge to reduce the risk of foodborne disease transmission, including providing necessary additional information, such as the date of onset of symptoms and an illness, or of a diagnosis without symptoms, if the food employee or conditional employee:

1. Has any of the following symptoms:
  - a. Vomiting;
  - b. Diarrhea;
  - c. Jaundice;
  - d. Sore throat with fever; or
  - e. A lesion containing pus such as a boil or infected wound that is open or draining and is:
    - (1) On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;
    - (2) On exposed portions of the arms, unless the lesion is protected by an impermeable cover; or
    - (3) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;
2. Has an illness diagnosed by a health practitioner due to:
  - a. Norovirus;
  - b. Hepatitis A virus;
  - c. *Shigella* spp.;
  - d. Enterohemorrhagic or Shiga-toxin producing *Escherichia coli*; or
  - e. *Salmonella Typhi*;
3. Had a previous illness, diagnosed by a health practitioner, within the past three months due to *Salmonella Typhi*, without having received antibiotic therapy, as determined by a health practitioner;

4. Has been exposed to, or is the suspected source of, a confirmed disease outbreak, because the food employee or conditional employee consumed or prepared food implicated in the outbreak, or consumed food at an event prepared by a person who is infected or ill with:

- a. Norovirus within the past 48 hours of the last exposure;
- b. Enterohemorrhagic or Shiga-toxin producing Escherichia coli, or Shigella spp. within the past three days of the last exposure;
- c. Salmonella Typhi within the past 14 days of the last exposure; or
- d. Hepatitis A virus within the past 30 days of the last exposure; or

5. Has been exposed by attending or working in a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about an individual who works or attends a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, and individual diagnosed with an illness caused by:

- a. Norovirus within the past 48 hours of exposure;
- b. Enterohemorrhagic or Shiga-toxin producing Escherichia coli or Shigella spp. within the past three days of the last exposure;
- c. Salmonella Typhi within the past 14 days of the last exposure; or
- d. Hepatitis A virus within the past 30 days of the last exposure.

B. The person in charge shall notify the regulatory authority when a food employee is:

1. Jaundiced; or
2. Diagnosed with an illness due to a pathogen as specified under subdivision A 2 a through e of this section.

C. The person in charge shall ensure that a conditional employee:

1. Who exhibits or reports a symptom, or who reports a diagnosed illness as specified under subdivision A 2 a through e of this section, is prohibited from becoming a food employee until the conditional employee meets the criteria for the specific symptoms or diagnosed illness as specified under 12VAC5-421-100; and
2. Who will work as a food employee in a food establishment that serves a highly susceptible population and reports a history of exposure as specified under subdivision A 4 through 5 of this section, is prohibited from becoming a food employee until the conditional

employee meets the criteria specified under subdivision 9 of 12VAC5-421-100.

D. The person in charge shall ensure that a food employee who exhibits or reports a symptom, or who reports a diagnosed illness or history of exposure as specified under subdivision A 1 through 5 of this section is:

1. Excluded as specified under subdivisions 1 through 3 of 12VAC5-421-90, and subdivisions D 1, E 1, F 1, or G 1 of 12VAC5-421-90 and in compliance with the provisions specified under subdivision 1 through 7 of 12VAC5-421-100; or
2. Restricted as specified under subdivisions 4 b, 5 b, 6 b, or 7 b of 12VAC5-421-90, or subdivisions 8 or 9 of 12VAC5-421-90 and in compliance with the provisions specified under subdivisions 4 through 9 of 12VAC5-421-100.

E. A food employee or conditional employee shall report to the person in charge the information as specified under subsection A of this section.

F. A food employee shall:

1. Comply with an exclusion as specified under subdivisions 1 through 3 of 12VAC5-421-90 and subdivisions 4 a, 5 a, 6 a, or 7 a of 12VAC5-421-90 and with the provisions specified under subdivisions 1 through 7 of 12VAC5-421-100; or
2. Comply with a restriction as specified under subdivisions 4 b, 5 b, 6 b, or 7 b of 12VAC5-421-90, or subdivisions 8 or 9 of 12VAC5-421-90 and comply with the provisions specified under subdivisions 4 through 9 of 12VAC5-421-100.

## **12VAC5-421-90. Exclusions and restrictions.**

A. The person in charge shall exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent specified in subdivision 1 of 12VAC5-421-80;

B. Except as specified under subsection C or D of this section, the person in charge shall restrict a food employee from working with exposed food; clean equipment, utensils, and linens; and unwrapped single service and single use articles in a food establishment if the food employee is:

1. Suffering from a symptom specified in 12VAC5 421 80 subdivision 2 a (1), (2), (3) or (5) or subdivision 2 b; or
2. Not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a of 12VAC5 421 80, but has a stool that yields a specimen culture that is positive for Salmonella typhi, Shigella spp., or E. coli O157:H7.

C. If the population served is a highly susceptible population, the person in charge shall exclude a food employee who:

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~~1. Is experiencing a symptom of acute gastrointestinal illness specified in 12VAC5-421-80 subdivision 2 a (1), (2), (3) or (5) and meets a high risk condition specified in subdivision 4 of 12VAC5-421-80;~~

~~2. Is not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a of 12VAC5-421-80, but has a stool that yields a specimen culture that is positive for *S. typhi*, *Shigella* spp., or *E. coli* O157:H7;~~

~~3. Had a past illness from *S. typhi* within the last three months; or~~

~~4. Had a past illness from *Shigella* spp. or *E. coli* O157:H7 within the last month.~~

~~D. For a food employee who is jaundiced:~~

~~1. If the onset of jaundice occurred within the last seven calendar days, the person in charge shall exclude the food employee from the food establishment; or~~

~~2. If the onset of jaundice occurred more than seven calendar days before, the person in charge shall:~~

~~a. Exclude the food employee from a food establishment that serves a highly susceptible population; or~~

~~b. Restrict the food employee from activities specified in subdivision 2 of 12VAC5-421-90, if the food establishment does not serve a highly susceptible population.~~

The person in charge shall exclude or restrict a food employee from a food establishment in accordance with the following:

1. Except when the symptom is from a noninfectious condition, exclude a food employee if the food employee is:

a. Symptomatic with vomiting or diarrhea; or

b. Symptomatic with vomiting or diarrhea and diagnosed with an infection from Norovirus, *Shigella* spp., or Enterohemorrhagic or Shiga-toxin producing *Escherichia coli*.

2. Exclude a food employee who is:

a. Jaundiced and the onset of jaundice occurred within the last seven calendar days, unless the food employee provides to the person in charge written medical documentation from a health practitioner specifying that the jaundice is not caused by Hepatitis A virus or other fecal-orally transmitted infection;

b. Diagnosed with an infection from Hepatitis A virus within 14 calendar days from the onset of any illness symptoms, or within seven calendar days of the onset of jaundice; or

c. Diagnosed with an infection from Hepatitis A virus without developing symptoms.

3. Exclude a food employee who is diagnosed with an infection from *Salmonella Typhi*, or reports a previous infection with *Salmonella Typhi* within the past three months as specified in 12VAC5-421-80 A 3.

4. If a food employee is diagnosed with an infection from Norovirus and is asymptomatic:

a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or

b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.

5. If a food employee is diagnosed with an infection from *Shigella* spp. and is asymptomatic:

a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or

b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.

6. If a food employee is diagnosed with an infection from Enterohemorrhagic or Shiga-toxin producing *E. coli*, and is asymptomatic:

a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or

b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.

7. If a food employee is ill with symptoms of acute onset of sore throat with fever:

a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or

b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.

8. If a food employee is infected with a skin lesion containing pus such as a boil or infected wound that is open or draining and not properly covered as specified under 12VAC5-421-80 A 1 e, restrict the food employee.

9. If a food employee is exposed to a foodborne pathogen as specified under 12VAC5-421-80 A 4 or 5, restrict the food employee who works in a food establishment serving a highly susceptible population.

## **12VAC5-421-100. Removal, adjustment, or retention of exclusions and restrictions.**

A. The person in charge may remove an exclusion specified under 12VAC5-421-90 A if:

~~1. The person in charge obtains approval from the regulatory authority; and~~

~~2. The person excluded as specified under 12VAC5-421-90 A provides to the person in charge written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, that specifies that the excluded person may work in an unrestricted capacity in a food establishment, including an establishment that serves a highly susceptible population, because the person is free of the infectious agent of concern as specified in 12VAC5-421-4070.~~

~~B. The person in charge may remove a restriction specified under:~~

~~1. 12VAC5-421-90 B 1 if the restricted person:~~

~~a. Is free of the symptoms specified under 12VAC5-421-80 subdivision 2 a (1), (2), (3) or (5) and no foodborne illness occurs that may have been caused by the restricted person;~~

~~b. Is suspected of causing foodborne illness but (i) is free of the symptoms specified under 12VAC5-421-80 subdivision 2 a (1), (2), (3) or (5) and (ii) provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in 12VAC5-421-4070; or~~

~~c. Provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, stating that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis; or~~

~~2. 12VAC5-421-90 B 2 if the restricted person provides written medical documentation from a physician, licensed to practice medicine, or, if allowed by law, a nurse practitioner or physician assistant, according to the criteria specified in 12VAC5-421-4070 that indicates the stools are free of Salmonella typhi, Shigella spp., or E. coli O157:H7, whichever is the infectious agent of concern.~~

~~C. The person in charge may remove an exclusion specified under 12VAC5-421-90 C if the excluded person provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant:~~

~~1. That specifies that the person is free of the infectious agent of concern as specified in 12VAC5-421-4070.~~

~~2. If the person is excluded under 12VAC5-421-90 C 1, that the symptoms experienced result from a chronic~~

~~noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.~~

~~D. The person in charge may remove an exclusion specified under 12VAC5-421-90 D 1 and 12VAC5-421-90 D 2 a and a restriction specified in 12VAC5-421-90 D 2 b if:~~

~~1. No foodborne illness occurs that may have been caused by the excluded or restricted person and the person provides written medical documentation from a physician licensed to practice medicine stating that specifies that the person is free of hepatitis A virus as specified in subdivision 4 a of 12VAC5-421-4070; or~~

~~2. The excluded or restricted person is suspected of causing foodborne illness and complies with subdivision 4 a and 4 b of 12VAC5-421-4070.~~

The person in charge shall adhere to the following conditions when removing, adjusting, or retaining the exclusion or restriction of a food employee:

1. Except when a food employee is diagnosed with an infection from Hepatitis A virus or Salmonella Typhi:

a. Reinstate a food employee who was excluded as specified under subdivision 1 a of 12VAC5-421-90 if the food employee:

(1) Is asymptomatic for at least 24 hours; or

(2) Provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition.

b. If a food employee was diagnosed with an infection from Norovirus and excluded as specified under subdivision 1 b of 12VAC5-421-90:

(1) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population until the conditions for reinstatement as specified in subdivision 4 a or b of this section are met; or

(2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subdivision 4 a or b of this section are met.

c. If a food employee was diagnosed with an infection from Shigella spp. and excluded as specified under subdivision 1 b of 12VAC5-421-90:

(1) Restrict the food employee, who is asymptomatic, for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified in subdivision 5 a or b of this section are met; or

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(2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subdivision 5 a or b, or 5 a and 1 c (1) of this section are met.

d. If a food employee was diagnosed with an infection from Enterohemorrhagic or Shiga-toxin producing Escherichia coli and excluded as specified under subdivision 1 b of 12VAC5-421-90:

(1) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified in subdivision 6 a or b of this section are met; or

(2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subdivision 6 a or b are met.

2. Reinstatement a food employee who was excluded as specified under subdivision 2 of 12VAC5-421-90 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

a. The food employee has been jaundiced for more than seven calendar days;

b. The anicteric food employee has been symptomatic with symptoms other than jaundice for more than 14 calendar days; or

c. The food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Hepatitis A virus infection.

3. Reinstatement a food employee who was excluded as specified under subdivision 3 of 12VAC5-421-90 if:

a. The person in charge obtains approval from the regulatory authority; and

b. The food employee provides to the person in charge written medical documentation from a health practitioner that states the employee is free from S. Typhi infection.

4. Reinstatement a food employee who was excluded as specified under subdivision 1 b or 4 a of 12VAC5-421-90, who was restricted under subdivision 4 b of 12VAC5-421-90 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

a. The excluded or restricted food employee provides to the person in charge written medical documentation from

a health practitioner stating that the food employee is free of a Norovirus infection;

b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than 48 hours have passed since the food employee became symptomatic; or

c. The food employee was excluded or restricted and did not develop symptoms and more than 48 hours have passed since the food employee was diagnosed.

5. Reinstatement a food employee who was excluded as specified under subdivision 1 b or 5 a of 12VAC5-421-90 or who was restricted under subdivision 5 b of 12VAC5-421-90 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Shigella spp. infection based on test results showing two consecutive negative stool specimen cultures that are taken:

(1) Not earlier than 48 hours after discontinuance of antibiotics, and

(2) At least 24 hours apart;

b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than seven calendar days have passed since the food employee became asymptomatic; or

c. The food employee was excluded or restricted and did not develop symptoms and more than seven calendar days have passed since the food employee was diagnosed.

6. Reinstatement a food employee who was excluded or restricted as specified under subdivision 1 b or 6 a of 12VAC5-421-90 or who was restricted under subdivision 6 b of 12VAC5-421-90 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of an infection from Enterohemorrhagic or Shiga-toxin producing Escherichia coli based on test results that show two consecutive negative stool specimen cultures that are taken:

(1) Not earlier than 48 hours after the discontinuance of antibiotics; and

(2) At least 24 hours apart;

b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved and more than seven calendar days have passed since the employee became asymptomatic; or

c. The food employee was excluded or restricted and did not develop symptoms and more than seven days have passed since the employee was diagnosed.

7. Reinstate a food employee who was excluded or restricted as specified under subdivision 7 a or b of 12VAC5-421-90 if the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee meets one of the following conditions:

a. Has received antibiotic therapy for Streptococcus pyogenes infection for more than 24 hours;

b. Has at least one negative throat specimen culture for Streptococcus pyogenes infection; or

c. Is otherwise determined by a health practitioner to be free of Streptococcus pyogenes infection.

8. Reinstate a food employee who was restricted as specified under subdivision 8 of 12VAC5-421-90 if the skin, infected wound, cut, or pustular boil is properly covered with one of the following:

a. An impermeable cover such as a finger cot or stall and a single-use glove over the impermeable cover if the infected wound or pustular boil is on the hand, finger, or wrist;

b. An impermeable cover on the arm if the infected wound or pustular boil is on the arm; or

c. A dry, durable, tight-fitting bandage if the infected wound or pustular boil is on another part of the body.

9. Reinstate a food employee who was restricted as specified under subdivision 9 of 12VAC5-421-90 and was exposed to one of the following pathogens as specified under 12VAC5-421-80 A 4 or 5:

a. Norovirus and one of the following conditions is met:

(1) More than 48 hours have passed since the last day the food employee was potentially exposed; or

(2) More than 48 hours have passed since the food employee's household contact became asymptomatic.

b. Shigella spp. or Enterohemorrhagic or Shiga-toxin producing Escherichia coli and one of the following conditions is met:

(1) More than three calendar days have passed since the last day the food employee was potentially exposed; or

(2) More than three calendar days have passed since the food employee's household contact became asymptomatic.

c. S. Typhi and one of the following conditions is met:

(1) More than 14 calendar days have passed since the last day the food employee was potentially exposed; or

(2) More than 14 calendar days have passed since the food employee's household contact became asymptomatic.

d. Hepatitis A virus and one of the following conditions is met:

(1) The food employee is immune to Hepatitis A virus infection because of prior illness from Hepatitis A;

(2) The food employee is immune to Hepatitis A virus infection because of vaccination against Hepatitis A;

(3) The food employee is immune to Hepatitis A virus infection because of IgG administration;

(4) More than 30 calendar days have passed since the last the food employee was potentially exposed;

(5) More than 30 calendar days have passed since the food employee's household contact became jaundiced; or

(6) The food employee does not use an alternative procedure that allows bare hand contact with ready-to-eat food until at least 30 days after the potential exposure, as specified in subdivisions 9 d (4) and (5) of this section, and the food employee receives additional training about:

(a) Hepatitis A symptoms and preventing the transmission of infection;

(b) Proper handwashing procedures; and

(c) Protecting ready-to-eat food from contamination introduced by bare hand contact.

**12VAC5-421-110. Responsibility of a food employee or an applicant to report to the person in charge. (Repealed.)**

~~A food employee or a person who applies for a job as a food employee shall:~~

~~1. In a manner specified in 12VAC5-421-80, report to the person in charge the information specified in 12VAC5-421-80; and~~

~~2. Comply with exclusions and restrictions that are specified in 12VAC5-421-90.~~

**12VAC5-421-120. Reporting by the person in charge. (Repealed.)**

~~The person in charge shall notify the regulatory authority that a food employee is diagnosed with, an illness due to Salmonella typhi, Shigella spp., Shiga toxin producing Escherichia coli, or hepatitis A virus.~~



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## 12VAC5-421-140. Cleaning procedure of hands and arms.

A. Except as specified in subsection ~~B~~ D of this section, food employees shall clean their hands and exposed portions of their arms (or surrogate prosthetic devices for hands or arms) for at least 20 seconds, using a cleaning compound in a lavatory that is equipped as specified under 12VAC5-421-2190 A.

~~B. Food employees shall use the following cleaning procedure:~~

~~1. Vigorous friction on the surfaces of the lathered fingers, finger tips, areas between the fingers, hands and arms (or by vigorously rubbing the surrogate prosthetic devices for hands or arms) for at least 10 to 15 seconds, followed by thorough rinsing under clean, running warm water; and~~

~~2. Immediately follow the cleaning procedure, thorough drying of cleaned hands and arms (or surrogate prosthetic devices) using a method as specified under 12VAC5-421-3030.~~

B. Food employees shall use the following cleaning procedure in the order stated to clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands and arms:

1. Rinse under clean, running warm water;

2. Apply an amount of cleaning compound recommended by the cleaning compound manufacturer;

3. Rub together vigorously for at least 10 to 15 seconds while:

a. Paying particular attention to removing soil from underneath the fingernails during the cleaning procedure; and

b. Creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, finger tips, and areas between the fingers;

4. Thoroughly rinsing under clean, running warm water; and

5. Immediately follow the cleaning procedure with thorough drying using a method as specified under 12VAC5-421-3030.

~~C. Food employees shall pay particular attention to the areas underneath the fingernails during the cleaning procedure.~~

C. To avoid recontaminating their hands or surrogate prosthetic devices, food employees may use disposable paper towels or similar clean barriers when touching surfaces such as manually operated faucet handles on a handwashing sink or the handle of a restroom door.

D. If approved and capable of removing the types of soils encountered in the food operations involved, an automatic

handwashing facility may be used by food employees to clean their hands.

## 12VAC5-421-150. ~~[Reserved]~~ (Repealed.)

## 12VAC5-421-180. Hand sanitizers Antiseptics.

~~A. A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:~~

1. Comply with one of the following:

a. ~~Be an FDA approved drug based on safety and effectiveness approved drug that is listed in the FDA publication Approved Drug Products with Therapeutic Equivalence Evaluations as an approved drug based on safety and effectiveness;~~ or

b. ~~Have active antimicrobial ingredients that are approved by FDA as an OTC (over the counter) health-care antiseptic drug product that is safe and effective for application to human skin listed in the FDA monograph for OTC (over the counter) Health-Care Antiseptic Drug Products as an antiseptic handwash; and~~

2. ~~Consist of components that are~~ Comply with one of the following:

~~a. Listed for such use in contact with food in 21 CFR Part 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizer;~~

~~b. Exempt from regulation as food additives under 21 CFR 170.39 - Threshold of regulation for substances used in food contact articles;~~

~~e. Generally recognized as safe (GRAS) for the intended use in contact with food within the meaning of the Federal Food, Drug and Cosmetic Act (FFDCA); or~~

~~d. Permitted for such use by an effective Food Contact Substance Notification as defined by paragraph 409(h) of the FFDCA and listed in the FDA's Inventory of Effective Premarket Notifications for Food Contact Substances; and~~

a. Have components that are exempted from the requirement of being listed in the federal Food Additive regulations as specified in 21 CFR 170.39 - Threshold of regulation for substances used in food-contact articles; or

b. Comply with and be listed in:

(i) 21 CFR 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers as regulated for use as a food additive with conditions of safe use; or

(ii) 21 CFR 182 - Substances Generally Recognized as Safe, 21 CFR 184 - Direct Food Substances Affirmed as Generally Recognized as Safe, or 21 CFR 186 - Indirect

Food Substances Affirmed as Generally Recognized as Safe for use in contact with food; and

3. Be applied only to hands that are cleaned as specified under 12VAC5-421-140.

~~B. If a hand sanitizer or a chemical hand sanitizing solution used as a hand dip does not meet the criteria specified under subdivision A 2 of this section, use shall be: If a hand antiseptic or a hand antiseptic solution used as a hand dip does not meet the criteria specified in subdivision A 2 of this section, use shall be:~~

1. Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or
2. Limited to situations that involve no direct contact with food by the bare hands.

~~C. A chemical hand sanitizing solution~~ hand antiseptic solution used as a hand dip shall be maintained clean and at a strength equivalent to 100 ppm (mg/l) chlorine or above.

**12VAC5-421-360. Shell eggs.**

Shell eggs shall be received clean and sound and shall not exceed the restricted egg tolerances for U.S. Consumer Grade B as ~~specified in 7 CFR Part 56 Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs, and 7 CFR Part 59 Regulations Governing the Inspection of Eggs and Egg Products as specified in United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.200 et seq., administered by the Agricultural Marketing Service of USDA.~~

**12VAC5-421-370. Eggs and milk products, pasteurized.**

~~A. Liquid, frozen, and dry eggs and egg~~ Egg products shall be obtained pasteurized.

~~B. Fluid and dry milk and milk products complying with Grade A standards as specified in law shall be obtained pasteurized; shall:~~

1. Be obtained pasteurized; and
2. Comply with Grade A standards as specified in law.

C. Frozen milk products, such as ice cream, shall be obtained pasteurized in accordance with 21 CFR Part 135, Frozen Desserts.

D. Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are provided for in the Code of Federal Regulations, such as 21 CFR Part 133, Cheeses and Related Cheese Products, for curing certain cheese varieties.

**12VAC5-421-400. Shucked shellfish, packaging and identification.**

A. Raw shucked shellfish shall be obtained in nonreturnable packages that bear a legible label that identifies the:

1. Name, address, and certification number of the ~~shucker-packer~~ shucker, packer, or repacker of the molluscan shellfish; and

2. The "sell by" or "best if used by" date for packages with a capacity of less than one-half gallon (1.87 L) or the date shucked for packages with a capacity of one-half gallon (1.87 L) or more.

B. A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under subsection A of this section shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR 1240.60(d), Subpart D, Specific Administrative Decisions Regarding Interstate Shipments.

**12VAC5-421-410. Shellstock identification.**

A. Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program ~~Manual of Operations~~ Guide for the Control of Molluscan Shellfish, Part II Sanitation of the Harvesting, Processing and Distribution of Shellfish, 1995 Revision, and that list:

1. Except as specified under subsection C of this section, on the harvester's tag or label, the following information in the following order:

- a. The harvester's identification number that is assigned by the shellfish control authority,
- b. The date of harvesting,
- c. The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested,
- d. The type and quantity of shellfish, and

e. The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days"; and

2. Except as specified under subsection D of this section, on each dealer's tag or label, the following information in the following order:

- a. The dealer's name and address, and the certification number assigned by the shellfish control authority,
- b. The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested,

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c. The same information as specified for a harvester's tag under subdivisions 1 b through d of this subsection, and

d. The following statement in bold, capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

B. A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under subsection A of this section shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR 1240.60(d), Subpart D, Specific Administrative Decisions Regarding Interstate Shipments.

C. If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.

D. If the harvester's tag or label is designed to accommodate each dealer's identification as specified under subdivisions A 2 a and b of this section, individual dealer tags or labels need not be provided.

## **12VAC5-421-430. Molluscan shellfish; original container.**

A. Except as specified in subsections B and C of this section, molluscan shellfish shall not be removed from the container in which they were received other than immediately before sale or preparation for service.

B. For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:

1. The source of the shellstock on display is identified as specified under 12VAC5-421-410 and recorded as specified under 12VAC5-421-440; and
2. The shellstock are protected from contamination.

C. Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:

1. The labeling information for the shellfish on display as specified under 12VAC5-421-400 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and
2. The shellfish are protected from contamination.

D. Shucked shellfish may be removed from the container in which they were received and repacked in consumer self-service containers where allowed by law if:

1. The labeling information for the shellfish is on each consumer self-service container as specified under

12VAC5-421-400 and 12VAC5-421-900 A and B 1 through 5;

2. The labeling information as specified under 12VAC5-421-400 is retained and correlated with the date when, or dates during which, the shellfish are sold or served;

3. The labeling information and dates specified under subdivision D 2 of this section are maintained for 90 days; and

4. The shellfish are protected from contamination.

## **12VAC5-421-440. Shellstock; maintaining identification.**

A. Except as specified under subdivision ~~B~~ C 2 of this section, shellstock tags or labels shall remain attached to the container in which the shellstock are received until the container is empty.

~~B. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date the container is emptied by:~~

~~1. Using an approved recordkeeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and~~

~~2. If shellstock are removed from their tagged or labeled container:~~

~~a. Preserving source identification by using a recordkeeping system as specified under subdivision 1 of this subsection;~~

~~b. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container being ordered by the consumer.~~

B. The date when the last shellstock from the container is sold or served shall be recorded on the tag or label.

C. The identity of the source of shellfish that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date that is recorded on the tag or label as specified in subsection B of this section, by:

1. Using an approved recordkeeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified under subsection B of this section; and

2. If shellstock are removed from its tagged or labeled container:

a. Preserving source identification by using a recordkeeping system as specified under subdivision C 1 of this section, and

b. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container with certification numbers, different harvest dates, or different growing areas as identified on the tag or label before being ordered by the consumer.

Article 3

Protection from Contamination after Receiving

**12VAC5-421-450. Preventing contamination.**

A. Food employees shall wash their hands as specified under 12VAC5-421-140.

B. Except when washing fruits and vegetables as specified under 12VAC5-421-510 or as specified in subsection C D of this section, food employees shall not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves or dispensing equipment.

~~C. When otherwise approved, food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands.~~

~~D. Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.~~

C. Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

D. Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if:

1. The permit holder obtains prior approval from the regulatory authority;

2. Written procedures are maintained in the food establishment and made available to the regulatory authority upon request that include:

a. For each bare hand contact procedure, a listing of the specific ready-to-eat foods that are touched by bare hands.

b. Diagrams and other information showing that handwashing facilities, installed, located, equipped, and maintained as specified under 12VAC5-421-2230, 12VAC5-421-2280, 12VAC5-421-2310, 12VAC5-421-3020, 12VAC5-421-3030, and 12VAC5-421-3045 are in an easily accessible location and in close proximity to the work station where the bare hand contact procedure is conducted;

3. A written employee health policy that details how the food establishment complies with 12VAC5-421-80, 12VAC5-421-90, and 12VAC5-421-100 including:

a. Documentation that the food employees and conditional employees acknowledge that they are informed to report information about their health and

activities as they relate to gastrointestinal symptoms and diseases that are transmittable through food as specified under 12VAC5-421-80 A,

b. Documentation that food employees and conditional employees acknowledge their responsibilities as specified under 12VAC5-421-80 E and F, and

c. Documentation that the person in charge acknowledges the responsibilities as specified under 12VAC5-421-80 B, C, and D, and 12VAC5-421-90 and 12VAC5-421-100;

4. Documentation that the food employees acknowledge that they have received training in:

a. The risks of contacting the specific ready-to-eat foods with their bare hands,

b. Proper handwashing as specified under 12VAC5-421-140,

c. When to wash their hands as specified under 12VAC5-421-160,

d. Where to wash their hands as specified under 12VAC5-421-170,

e. Proper fingernail maintenance as specified under 12VAC5-421-190,

f. Prohibition of jewelry as specified under 12VAC5-421-200, and

g. Good hygienic practices as specified under 12VAC5-421-220 and 12VAC5-421-230;

5. Documentation that hands are washed before food preparation and as necessary to prevent cross-contamination by food employees as specified under 12VAC5-421-130, 12VAC5-421-140, 12VAC5-421-160, and 12VAC5-421-170 during all hours of operation when the specific ready-to-eat foods are prepared;

6. Documentation that food employees contacting ready-to-eat food with bare hands use two or more of the following control measures to provide additional safeguards to hazards associated with bare hand contact:

a. Double handwashing,

b. Nail brushes,

c. A hand antiseptic after handwashing as specified under 12VAC5-421-180,

d. Incentive programs such as paid sick leave that assist or encourage food employees not to work when they are ill, or

e. Other control measures approved by the regulatory authority; and

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7. Documentation that corrective action is taken when subdivision D 1 through 6 of this section are not followed.

## **12VAC5-421-490. Pasteurized eggs; substitute for shell eggs for certain recipes and populations.**

Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or bearnaise sauce, mayonnaise, meringue, and egg-fortified beverages that are not:

1. Cooked as specified in 12VAC5-421-700 A 1 or 2; or
2. Included in 12VAC5-421-700 D. ~~The eggs are held before service following cooking.~~

## **12VAC5-421-500. Protection from unapproved additives.**

A. As Food, as specified in 12VAC5-421-350, ~~food~~ shall be protected from contamination that may result from the addition of:

1. Unsafe or unapproved food or color additives; and
2. Unsafe or unapproved levels of approved food and color additives.

B. A food employee shall not:

1. Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B<sub>1</sub>; or
- ~~2. Serve or sell food specified in subdivision 1 of this subsection that is treated with sulfiting agents before receipt by the food establishment, except that grapes need not meet the provisions of this subsection.~~

2. Except for grapes, serve or sell food specified under subdivision B 1 of this section that is treated with sulfiting agents before receipt by the food establishment.

## **12VAC5-421-540. Food contact with equipment and utensils.**

Food shall only contact surfaces of ~~equipment and utensils that are cleaned as specified under 12VAC5 421 1770 through 12VAC5 421 1870 and sanitized as specified under 12VAC5 421 1880 through 12VAC5 421 1900.~~ :

1. Equipment and utensils that are cleaned as specified under 12VAC5-421-1770 through 12VAC5-421-1870, and sanitized as specified under 12VAC5-421-1880 through 12VAC5-421-1900; or
2. Single-service and single-use articles.

## **12VAC5-421-570. Wiping cloths; used for one purpose.**

A. ~~Cloths that are in use for wiping food spills shall be used for no other purpose.~~ in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:

1. Maintained dry; and

2. Used for no other purpose.

B. Cloths used for wiping food spills shall be:

1. Dry and used for wiping food spills from tableware and carry-out containers; or

~~2. Wet and cleaned as specified under 12VAC5 421 1920 D, stored in a chemical sanitizer at a concentration specified in 12VAC5 421 3380, and used for wiping spills from food contact and nonfood contact surfaces of equipment.~~

~~C. Dry or wet cloths that are used with raw animal foods shall be kept separate from cloths used for other purposes, and moist cloths used with raw animal foods shall be kept in a separate sanitizing solution.~~

~~D. Wet wiping cloths used with a freshly made sanitizing solution and dry wiping cloths shall be free of food debris and visible soil.~~

~~E. Working containers of sanitizing solutions for storage of in-use wiping cloths shall be placed above the floor and used in a manner to prevent contamination of food, equipment, utensils, linens, single-service or single-use articles.~~

B. Cloths in-use for wiping counters and other equipment surfaces shall be:

1. Held between uses in a chemical sanitizer solution at a concentration specified in 12VAC5-421-3380; and

2. Laundered daily as specified under 12VAC5-421-1920 D.

C. Cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from other cloths used for other purposes.

D. Dry wiping cloths and the chemical sanitizing solutions specified in subdivision B 1 of this section in which wet wiping cloths are held between uses shall be free of food debris and visible soil.

E. Containers of chemical sanitizing solutions specified in subdivision B 1 of this section in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service, or single-use articles.

F. Single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.

## **12VAC5-421-680. Returned food and reservice of food.**

A. Except as specified under subsection B of this section, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer shall not be offered as food for human consumption.

B. ~~A~~ Except as specified in subdivision 8 of 12VAC5-421-950, a container of food that is not potentially hazardous (time/temperature control for safety food) may be ~~transferred~~ reserved from one consumer to another if:

1. The food is dispensed so that it is protected from contamination and the container is closed between uses such as a narrow-neck bottle containing catsup, steak sauce, or wine; or
2. The food, such as crackers, salt or pepper, is in an unopened original package and maintained in sound condition.

Article 4

Destruction of Organisms of Public Health Concern

**12VAC5-421-700. Raw animal foods.**

A. Except as specified in subsections B, C, and D of this section, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

1. 145°F (63°C) or above for 15 seconds for:
  - a. Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service; and
  - b. Except as specified under subdivisions A 2 and 3 and subsection B and C of this section, fish, ~~and~~ meat, ~~and~~ pork including game animals commercially raised for food as specified under 12VAC5-421-330 A 1 and game animals under a voluntary inspection program as specified under 12VAC5-421-330 A 2;
2. 155°F (68°C) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified under 12VAC5-421-330 A 1, and game animals under a voluntary inspection program as specified under 12VAC5-421-330 A 2; and raw eggs that are not prepared as specified under subdivision 1 a of this subsection:

Minimum	
Temperature °F (°C)	Time
145 (63)	3 minutes
150 (66)	1 minute
158 (70)	<1 second (instantaneous)

3. 165°F (74°C) or above for 15 seconds for poultry, wild game animals as specified under 12VAC5-421-330 A 3,

stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, or poultry.

B. Whole ~~beef roasts and corned beef roasts, pork roasts, meat roasts including beef, corned beef, lamb, pork,~~ and cured pork roasts such as ham shall be cooked:

1. In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature; and

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 10 lbs (4.5 kg)	10 lbs (4.5 kg) or more
Still Dry	350°F (177°C) or more	250°F (121°C) or more
Convection	325°F (163°C) or more	250°F (121°C) or more
High Humidity <sup>1</sup>	250°F (121°C) or less	250°F (121°C) or less
<sup>1</sup> Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.		

2. As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature.

Temperature °F (°C)	Time <sup>1</sup> in Minutes	Temperature °F (°C)	Time <sup>1</sup> in Seconds
130 (54.4)	112	147 (63.9)	134
131 (55.0)	89	149 (65.0)	85
133 (56.1)	56	151 (66.1)	54
135 (57.2)	36	153 (67.2)	34
136 (57.8)	28	155 (68.3)	22
138 (58.9)	18	157 (69.4)	14
140 (60.0)	12	158 (70.0)	0
142 (61.1)	8		
144 (62.2)	5		
145 (62.8)	4		
<sup>1</sup> Holding time may include postoven heat rise			

C. A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:

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1. The food establishment serves a population that is not a highly susceptible population;
2. The steak is labeled, as specified under 12VAC5-421-270 E, to indicate that it meets the definition of "whole-muscle, intact beef"; and
3. The steak is cooked on both the top and bottom to a surface temperature of 145°F (63°C) or above and a cooked color change is achieved on all external surfaces.

D. A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare, or a partially cooked food such as lightly cooked fish, soft cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in subsection C of this section, may be served or offered for sale in a ready-to-eat form if:

1. (i) As specified under subdivisions 3 a and b of 12VAC5-421-950 the food establishment serves a population that is not a highly susceptible population and (ii) the consumer is informed as specified under 12VAC5-421-930 that to ensure its safety, the food should be cooked as specified under subsections A or B of this section; or
2. The regulatory authority grants a variance from subsection A or B of this section as specified in 12VAC5-421-3570 based on a HACCP plan that:
  - a. Is submitted by the permit holder and approved as specified under 12VAC5-421-3570;
  - b. Documents scientific data or other information that shows that a lesser time and temperature regimen results in a safe food; and
  - c. Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions.

## 12VAC5-421-730. Parasite destruction.

A. Except as specified in subsection B of this section, before service or sale in ready-to-eat form, raw, ~~marinated raw-marinated~~, partially cooked or marinated-partially cooked fish ~~other than molluscan shellfish shall be frozen throughout to a temperature of~~ shall be:

1. ~~4°F (-20°C) or below for 168 hours (seven days) in a freezer; or~~
2. ~~35°C (-31°F) or below for 15 hours in a blast freezer.~~

1. Frozen and stored at a temperature of -4°F (-20°C) or below for a minimum of 168 hours (seven days) in a freezer;

2. Frozen at -31°F (-35°C) or below until solid and stored at -31°F (-35°C) or below for a minimum of 15 hours; or

3. Frozen at -31°F (-35°C) or below until solid and stored at -4°F (-20°C) or below for a minimum of 24 hours.

~~B. If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), the fish may be served or sold in a raw, raw-marinated, or partially cooked ready to eat form without freezing as specified under subsection A of the section.~~

B. Subsection A of this section does not apply to:

1. Molluscan shellfish;

2. Tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin, Northern); or

3. Aquacultured fish, such as salmon, that:

a. If raised in open water, are raised in net-pens; or

b. Are raised in land-based operations such as ponds or tanks; and

c. Are fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured fish.

## 12VAC5-421-740. Records, creation and retention.

A. Except as specified in 12VAC5-421-730 B and subsection B of this section, if raw, marinated, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food establishment for 90 calendar days beyond the time of service or sale of the fish.

B. If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under 12VAC5-421-730 may substitute for the records specified under subsection A of this section.

C. If raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in 12VAC5-421-730 B 3, a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in 12VAC5-421-730 B 3 shall be obtained by the person in charge and retained in the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish.

## 12VAC5-421-750. ~~Reheating for immediate service.~~ (Repealed.)

~~Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.~~

**12VAC5-421-760. Reheating for hot holding.**

A. Except as specified under subsections B, C and E of this section, potentially hazardous food (time/temperature control for safety food) that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach at least 165°F (74°C) for 15 seconds.

B. Except as specified under subsection C of this section, potentially hazardous food (time/temperature control for safety food) reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165°F (74°C) and the food is rotated or stirred, covered, and allowed to stand covered two minutes after reheating.

C. Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 135°F (57°C) for hot holding.

D. Reheating for hot holding ~~shall be done rapidly and the time the food is between the temperature specified under subdivision 2 of 12VAC5-421-820 and 165°F (74°C) shall not exceed two hours as specified under subsections A through C of this section shall be done rapidly and the time the food is between 41°F (5°C) and the temperatures specified under subsections A through C of this section may not exceed two hours.~~

E. Remaining unsliced portions of meat roasts that are cooked as specified under 12VAC5-421-700 B may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under 12VAC5-421-700 B.

**12VAC5-421-780. Potentially hazardous food, slacking.**

Frozen potentially hazardous food (time/temperature control for safety food) that is slacked to moderate the temperature shall be held:

1. Under refrigeration that maintains the food temperature at 41°F (5°C) or less; or
2. At any temperature if the food remains frozen.

**12VAC5-421-790. Thawing.**

Except as specified in subdivision 4 of this section, potentially hazardous food (time/temperature control for safety food) shall be thawed:

1. Under refrigeration that maintains the food temperature at 41°F (5°C) or less; or
2. Completely submerged under running water:
  - a. At a water temperature of 70°F (21°C) or below;

b. With sufficient water velocity to agitate and float off loose particles in an overflow; and

c. For a period of time that does not allow thawed portions of ready-to-eat food to rise above 41°F (5°C); or

d. For a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified under 12VAC5-421-700 A or B to be above 41°F (5°C) for more than four hours including:

(1) The time the food is exposed to the running water and the time needed for preparation for cooking; or

(2) The time it takes under refrigeration to lower the food temperature to 41°F (5°C);

3. As part of a cooking process if the food that is frozen is:

a. Cooked as specified under 12VAC5-421-700 A or B or 12VAC5-421-710; or

b. Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

4. Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

**12VAC5-421-800. Cooling.**

A. Cooked potentially hazardous food (time/temperature controlled for safety food) shall be cooled:

1. Within two hours, from 135°F (57°C) to 70°F (21°C); and

~~2. Within an additional four hours, from 70°F (21°C) to 41°F (5°C) or less.~~

2. Within a total of six hours from 135°F (57°C) to 41°F (5°C) or less.

B. Potentially hazardous food (time/temperature control for safety food) shall be cooled within four hours to 41°F (5°C) or less if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

C. Except as specified in subsection D of this section, a potentially hazardous food (time/temperature control for safety food) received in compliance with laws allowing a temperature above 41°F (5°C) during shipment from the supplier as specified in 12VAC5-421-340 B, shall be cooled within four hours to 41°F (5°C) or less.

D. Raw shell eggs shall be received as specified under 12VAC5-421-340 C and immediately placed in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.



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## **12VAC5-421-820. Potentially hazardous food; hot and cold holding.**

A. Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under 12VAC5-421-850, potentially hazardous food (time/temperature control for safety food) shall be maintained:

1. At 135°F (57°C) or above, except that roasts cooked to a temperature and for a time specified under 12VAC5-421-700 B or reheated as specified in 12VAC5-421-760 E may be held at a temperature of 130°F (54°C) or above; or
2. At 41°F (5°C) or less.

B. Shell eggs that have not been treated to destroy all viable *Salmonellae* shall be stored in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

C. Potentially hazardous food (time/temperature control for safety food) in a homogenous liquid form may be maintained outside the temperature control requirements, as specified in subsection A of this section, while contained within specially designed equipment that complies with the design and construction requirements as specified under subdivision 5 of 12VAC5-421-1230.

## **12VAC5-421-830. Ready-to-eat, potentially hazardous food, date marking.**

~~A. Except as specified in subsection D of this section, refrigerated, ready to eat, potentially hazardous food prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the food shall be consumed on the premises, sold, or discarded within seven calendar days or less from the day the food is prepared. The day of preparation shall be counted as day 1 when packaging food using a reduced oxygen packaging method as specified under 12VAC5-421-870, and except as specified in subsections D and E of this section, refrigerated ready-to-eat potentially hazardous food (time/temperature control for safety food) prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded when held at a temperature of 41°F (5°C) or less for a maximum of seven days.~~

B. Except as specified in subsections ~~D and E~~ D through F of this section, refrigerated ready-to-eat, potentially hazardous food (time/temperature control for safety food) prepared and packaged by a food processing plant shall be clearly marked at the time the original container is opened in a food establishment and if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in subsection A of this section and:

1. The day the original container is opened in the food establishment shall be counted as day 1; and

2. The day or date marked by the food establishment shall not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety.

~~C. A refrigerated, ready to eat potentially hazardous food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine, may be marked as specified in subsection A or B of this section, or by an alternative method acceptable to the regulatory authority.~~

~~D. Subsections A and B of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.~~

~~E. Subsection B of this section does not apply to the following when the face has been cut, but the remaining portion is whole and intact.~~

~~1. Fermented sausages produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated" and that retain the original casing on the product;~~

~~2. Shelf stable, dry, fermented sausages; and~~

~~3. Shelf stable salt cured products such as prosciutto and Parma (ham) produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated."~~

~~F. A refrigerated, ready to eat, potentially hazardous food ingredient or a portion of a refrigerated, ready to eat, potentially hazardous food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest prepared or first prepared ingredient.~~

C. A refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

D. A date marking system that meets the criteria specified in subsections A and B of this section may include:

1. Using a method approved by the regulatory authority for refrigerated, ready-to-eat potentially hazardous food (time/temperature control for safety food) that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft-serve mix or milk in a dispensing machine;

2. Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by

which the food must be consumed on the premises, sold, or discarded as specified in subsection A of this section;

3. Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date of day by which the food must be consumed on the premises, sold, or discarded as specified under subsection B of this section; or

4. Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the regulatory authority upon request.

E. Subsections A and B of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

F. Subsection B of this section does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority:

1. Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR Part 110 Current good manufacturing practice in manufacturing, packing or holding food;

2. Hard cheeses containing not more than 39% moisture as defined in 21 CFR Part 133 Cheeses and related cheese products, such as cheddar, gruyere, parmesan and reggiano, and romano;

3. Semi-soft cheese containing more than 39% moisture, but not more than 50% moisture, as defined in 21 CFR Part 133 Cheeses and cheese related products, such as blue, edam, gorgonzola, gouda, and monterey jack;

4. Cultured dairy products as defined in 21 CFR Part 131 Milk and cream, such as yogurt, sour cream, and buttermilk;

5. Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products as defined in 21 CFR Part 114 Acidified foods;

6. Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami that are not labeled "Keep Refrigerated" as specified in 9 CFR Part 317 Labeling, marking devices, and containers, and that retain the original casing on the product; and

7. Shelf stable salt-cured products such as prosciutto and Parma (ham) that are not labeled "Keep Refrigerated" as specified in 9 CFR Part 317 Labeling, marking devices, and containers.

**12VAC5-421-850. Time as a public health control.**

A. Except as specified under subsection B of this section, if time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of

potentially hazardous food before cooking, or for ready to eat potentially hazardous food that is displayed or held for service for immediate consumption:

1. The food shall be marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;

2. The food shall be cooked and served, served if ready to eat, or discarded, within four hours from the point in time when the food is removed from temperature control;

3. The food in unmarked containers or packages or marked to exceed a four hour limit shall be discarded; and

4. Written procedures shall be maintained in the food establishment and made available to the regulatory authority upon request, that ensure compliance with:

a. Subdivisions 1, 2 and 3 of this section; and

b. 12VAC5 421 800 for food that is prepared, cooked, and refrigerated before time is used as a public health control.

B. In a food establishment that serves a highly susceptible population, time only, rather than time in conjunction with temperature, shall not be used as the public health control for raw eggs:

A. Except as specified under subsection D of this section, if time without temperature control is used as the public health control for a working supply of potentially hazardous food (time/temperature control for safety food) before cooking or for ready-to-eat potentially hazardous food (time/temperature control for safety food) that is displayed or held for sale or service, written procedures shall be prepared in advance, maintained in the food establishment, and made available to the regulatory authority upon request that specify:

1. Methods of compliance with subdivisions B 1 through 3 or C 1 through 5 of this section; and

2. Methods of compliance with 12VAC5-421-800 for food that is prepared, cooked, and refrigerated before time is used as a public health control.

B. If time without temperature control is used as the public health control up to a maximum of four hours:

1. The food shall be marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;

2. The food shall be cooked and served, served at any temperature if ready-to-eat, or discarded, within four hours from the point in time when the food is removed from temperature control; and

3. The food in unmarked containers or packages, or marked to exceed a four-hour limit shall be discarded.

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C. If time without temperature control is used as the public health control up to a maximum of six hours:

1. The food shall have an initial temperature of 41°F (5°C) or less when removed from temperature control and the food temperature may not exceed 70°F (21°C) within a maximum time period of six hours;

2. The food shall be monitored to ensure the warmest portion of the food does not exceed 70°F (21°C) during the six-hour period, unless an ambient air temperature is maintained that ensures the food does not exceed 70°F (21°C) during the six-hour holding period;

3. The food shall be marked or otherwise identified to indicate:

a. The time when the food is removed from 41°F (5°C) or less cold-holding temperature control, and

b. The time that is six hours past the point in time when the food is removed from 41°F (5°C) or less cold-holding temperature control;

4. The food shall be:

a. Discarded if the temperature of the foods exceeds 70°F (21°C), or

b. Cooked and served, served at any temperature if ready-to-eat, or discarded within a maximum of six hours from the point in time when the food is removed from 41°F (5°C) or less cold-holding temperature control; and

5. The food in unmarked containers or packages, or marked with a time that exceeds the six-hour limit shall be discarded.

D. A food establishment that serves a highly susceptible population may not use time as specified under subsections A, B, or C of this section as the public health control for raw eggs.

## **12VAC5-421-860. Variance requirement.**

A food establishment shall obtain a variance from the regulatory authority as specified in 12VAC5-421-3570 and 12VAC5-421-3580 before:

1. Smoking food as a method of food preservation rather than as a method of flavor enhancement;

2. Curing food;

3. Using food additives or adding components such as vinegar:

a. As a method of food preservation rather than as a method of flavor enhancement; or

b. To render a food so that it is not potentially hazardous;

4. Packaging food using a reduced oxygen packaging method except as specified under 12VAC5-421-870 where

a barrier to *Clostridium botulinum* in addition to refrigeration exists;

5. Operating a molluscan shellfish life-support system display tank used to store and display shellfish that are offered for human consumption;

6. Custom processing animals that are for personal use as food and not for sale or service in a food establishment; or

~~7. Preparing food by another method that is determined by the regulatory authority to require a variance. Sprouting seeds or beans; or~~

~~8. Preparing food by another method that is determined by the regulatory authority to require a variance.~~

## **12VAC5-421-870. Reduced oxygen packaging; criteria.**

~~A. Except for a food establishment that obtains a variance as specified under 12VAC5-421-860, a food establishment that packages food using a reduced oxygen packaging method and *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form shall ensure that there are at least two barriers in place to control the growth and toxin formation of *Clostridium botulinum*.~~

~~B. A food establishment that packages food using a reduced oxygen packaging method and *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form shall have a HACCP plan that contains the information specified under subdivision 4 of 12VAC5-421-3630 and that:~~

~~1. Identifies the food to be packaged;~~

~~2. Limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:~~

~~a. Has an  $a_w$  of 0.91 or less;~~

~~b. Has a pH of 4.6 or less;~~

~~c. Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR 424.21, Use of food ingredients and sources of radiation, and is received in an intact package; or~~

~~d. Is a food with a high level of competing organisms such as raw meat or raw poultry;~~

~~3. Specifies methods for maintaining food at 41°F (5°C) or below;~~

~~4. Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:~~

~~a. Maintain the food at 41°F (5°C) or below; and~~

~~b. Discard the food if within 14 calendar days of its packaging it is not served for on-premises consumption;~~

~~or consumed if served or sold for off-premises consumption;~~

~~5. Limits the refrigerated shelf life to no more than 14 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;~~

~~6. Includes operational procedures that:~~

~~a. Prohibit contacting food with bare hands;~~

~~b. Identify a designated area and the method by which:~~

~~(1) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination; and~~

~~(2) Access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation, and~~

~~e. Delineate cleaning and sanitization procedures for food contact surfaces; and~~

~~7. Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:~~

~~a. Concepts required for a safe operation;~~

~~b. Equipment and facilities; and~~

~~e. Procedures specified under subdivision 6 of this subsection and subdivision 4 of 12VAC5-421-3630.~~

~~C. Except for fish that is frozen before, during, and after packaging, a food establishment shall not package fish using a reduced oxygen packaging method.~~

~~A. Except for a food establishment that obtains a variance as specified under 12VAC5-421-860 and except as specified under subsections C and E of this section, a food establishment that packages potentially hazardous food (time/temperature control for safety food) using a reduced oxygen packaging method shall ensure that there are at least two barriers in place to control the growth and toxin formation of Clostridium botulinum and the growth of Listeria monocytogenes.~~

~~B. A food establishment that packages potentially hazardous food (time/temperature control for safety food) using a reduced oxygen method shall have a HACCP plan that contains the following information specified under 12VAC5-421-3630 D:~~

~~1. Identifies food to be packaged;~~

~~2. Except as specified in subsections C and E and as specified in subsection D of this section, requires that the packaged food shall be maintained at 41°F (5°C) or less and meet at least one of the following criteria:~~

a. Has an  $A_w$  of 0.91 or less,

b. Has a pH of 4.6 or less,

c. Is a meat or poultry product cured as a food processing plant regulated by the USDA using substances specified in 9 CFR 424.21, Use of food ingredients and sources of radiation, and is received in an intact package, or

d. Is a food with a high level of competing organisms such as raw meat or raw poultry;

3. Describes how the package shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

a. Maintain food at 41°F (5°C) or below, and

b. Discard the food within 14 calendar days of its packaging if it not served for on-premises consumption, or consumed if served or sold for off-premises consumption;

4. Limits the refrigerated shelf life to no more than 14 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;

5. Includes operational procedures that:

a. Prohibit contacting food with bare hands,

b. Identify a designated work area and the method by which:

(1) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination, and

(2) Access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation, and

c. Delineate cleaning and sanitization procedures for food contact surfaces; and

6. Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:

a. Concepts required for safe operation,

b. Equipment and facilities, and

c. Procedures specified under subdivision B 5 of this section and 12VAC5-421-3630 D.

C. Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

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D. Except as specified in subsection C of this section, a food establishment may package food using a cook-chill or sous-vide process without obtaining a variance if:

1. The food establishment implements a HACCP plan that contains the information as specified under 12VAC5-421-3630 D:

2. The food is:

a. Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the bagged product to another business entity or the consumer,

b. Cooked to heat all parts of the food to a temperature and for a time as specified under 12VAC5-421-700,

c. Protected from contamination after cooking as specified in 12VAC5-421-450 through 12VAC5-421-690,

d. Placed in a package or bag with an oxygen barrier and sealed before cooking, or placed in a package or bag and sealed immediately after cooking, and before reaching a temperature below 135°F (57°C),

e. Cooled to 41°F (5°C) in the sealed package or bag as specified under 12VAC5-421-800, and subsequently:

(1) Cooled to 34°F (1°C) within 48 hours of reaching 41°F (5°C) and held at that temperature until consumed or discarded within 30 days after the date of preparation;

(2) Cooled to 34°F (1°C) within 48 hours of reaching 41°F (5°C), removed from refrigeration equipment that maintains a 34°F (1°C) food temperature and then held at 41°F (5°C) or less for no more than 72 hours, at which time the food must be consumed or discarded;

(3) Cooled to 38°F (3°C) or less within 24 hours of reaching 41°F (5°C) and held there for no more than 72 hours from packaging, at which time the food must be consumed or discarded; or

(4) Held frozen with no shelf-life restriction while frozen until consumed or used.

f. Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily,

g. If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation, and

h. Labeled with the product name and the date packaged; and

3. The records required to confirm that cooling and cold holding refrigeration time/temperature parameters are

required as part of the HACCP plan, are maintained and are:

a. Made available to the regulatory authority upon request, and

b. Held for six months; and

4. Written operational procedures as specified under subdivision B 5 of this section and a training program as specified under subdivision B 6 of this section are implemented.

E. A food establishment may package cheese using a reduced oxygen packaging method without obtaining a variance if it:

1. Limits the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food establishment and that meet the Standards of Identity as specified in 21 CFR 133.150 Hard Cheeses, 21 CFR 133.169 Pasteurized process cheese, or 21 CFR 133.187 Semi-soft cheeses;

2. Has a HACCP plan that contains the information specified in 12VAC5-421-3630 D;

3. Except as specified under subdivision B 2 , B 3 b, and B 4, complies with subsection B of this section;

4. Labels the package on the principal display panel with a "use by" date that does not exceed 30 days or the original manufacturer's "sell by" or "use by" date, whichever comes first; and

5. Discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within 30 calendar days of its packaging.

## **12VAC5-421-900. Food labels.**

A. Food packaged in a food establishment, shall be labeled as specified in accordance with all applicable laws and regulations, including 21 CFR Part 101 - Food Labeling, and 9 CFR Part 317 - Labeling, Marking Devices, and Containers.

B. Label information shall include:

1. The common name of the food, or absent a common name, an adequately descriptive identity statement;

2. If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

3. An accurate declaration of the quantity of contents;

4. The name and place of business of the manufacturer, packer, or distributor; and

~~5. Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3) — (5), nutrition labeling as~~

~~specified in 21 CFR Part 101 - Food Labeling, and 9 CFR Part 317 Subpart B - Nutrition Labeling.~~

~~6. For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.~~

5. The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient;

6. Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3) - (5), nutrition labeling as specified in 21 CFR Part 101 - Food Labeling, and 9 CFR Part 317 Subpart B - Nutrition Labeling; and

7. For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.

C. Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:

1. The manufacturer's or processor's label that was provided with the food; or
2. A card, sign, or other method of notification that includes the information specified under subdivisions B 1, 2 and 5 of this section.

D. Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:

1. A health, nutrient content, or other claim is not made;
2. There are no state or local laws requiring labeling; and
3. The food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.

Article 8

Special Requirements for Highly Susceptible Populations

**12VAC5-421-950. Pasteurized foods, prohibited reservice, and prohibited food.**

In a food establishment that serves a highly susceptible population:

1. The following criteria apply to juice:
  - a. For the purposes of this paragraph only, children who are age nine or less and receive food in a school, day care

setting, or similar facility that provides custodial care are included as highly susceptible populations;

b. Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR 101.17(g) Food Labeling, or packaged juice or beverage containing juice, that bears a warning label as specified under subdivision 2 of 12VAC5-421-765 shall not be served or offered for sale; and

c. Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified in subdivisions 2 through 5 of 12VAC5-421-3630 and as specified under 21 CFR 120.24, Process controls.

2. Pasteurized shell eggs ~~or pasteurized liquid, frozen, or dry eggs~~ or egg products shall be substituted for raw shell eggs in the preparation of:

- a. Foods such as Caesar salad, hollandaise or biarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages; and
- b. Except as specified in subdivision ~~5~~ 6 of this section, recipes in which more than one egg is broken and the eggs are combined.

3. The following foods shall not be served or offered for sale in a ready-to-eat form:

- a. Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;
- b. A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs, and meringue; and
- c. Raw seed sprouts.

4. Food employees shall not contact ready-to-eat food as specified in 12VAC5-421-450 B.

~~5. Subdivision 2 b of this section does not apply if:~~

- ~~a. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under 12VAC5-421-700 A 1, and served immediately, such as an omelet, soufflé, or scrambled eggs;~~
- ~~b. The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready to eat form, such as a cake, muffin, or bread; or~~
- ~~c. The preparation of the food is conducted under a HACCP plan that:~~

~~(1) Identifies the food to be prepared;~~

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~~(2) Prohibits contacting ready-to-eat food with bare hands;~~

~~(3) Includes specifications and practices that ensure:~~

~~(a) Salmonella Enteritidis growth is controlled before and after cooking; and~~

~~(b) Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in 12VAC5-421-700 A 2;~~

~~d. Contains the information specified under subdivision 4 of 12VAC5-421-3630 including procedures that:~~

~~(1) Control cross-contamination of ready-to-eat food with raw eggs; and~~

~~(2) Delineate cleaning and sanitization procedures for food contact surfaces; and~~

~~e. Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.~~

5. Time only, as the public health control as specified under 12VAC5-421-850, may not be used for raw eggs.

6. Subdivision 2 b of this section does not apply if:

a. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under 12VAC5-421-700 A 1, and served immediately, such as an omelet, soufflé, or scrambled eggs;

b. The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or

c. The preparation of the food is conducted under a HACCP plan that:

(1) Identifies the food to be prepared;

(2) Prohibits contacting ready-to-eat food with bare hands;

(3) Includes specifications and practices that ensure:

(a) Salmonella Enteritidis growth is controlled before and after cooking; and

(b) Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in 12VAC5-421-700 A 2;

d. Contains the information specified under subdivision 4 of 12VAC5-421-3630 including procedures that:

(1) Control cross contamination of ready-to-eat food with raw eggs; and

(2) Delineate cleaning and sanitization procedures for food-contact surfaces; and

e. Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

7. Except as specified in subdivision 8 of this section, food may be reserved as specified under 12VAC5-421-680 B 1 and 2.

8. Foods may not be reserved under the following conditions:

1. Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environment isolation may not be reserved to others outside.

2. Packages of food from any patients, clients, or other consumers should not be reserved to persons in protective environment isolation

## **12VAC5-421-980. Lead in ceramic, china, and crystal utensils, use limitation.**

A. Ceramic, china, crystal utensils, and decorative utensils such as hand-painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories:

Utensil Category	Description	
Hot beverage mugs	coffee mugs	0.5 mg/l
Large hollowware	bowls 1.16 qt. (1.1 liter)	1.0 mg/l
Small hollowware	bowls < 1.16 qt. (1.1 liter)	2.0 mg/l
Flat utensils	plates, saucers	3.0 mg/l

Utensil Category	Ceramic Article Description	Maximum Lead mg/L
Beverage Mugs, Cups, Pitchers	Coffee Mugs	0.5
Large Hollowware (excluding pitchers)	Bowls > 1.1 Liter (1.16 Quart)	1.0
Small Hollowware (excluding cups and mugs)	Bowls < 1.1 Liter (1.16 Quart)	2.0
Flat tableware	Plates, Saucers	3.0

B. Pewter alloys containing lead in excess of 0.05% may not be used as a food contact surface.

C. Solder and flux containing lead in excess of 0.2% may not be used as a food contact surface.

**12VAC5-421-1020. ~~Lead in pewter alloys, use limitation. (Repealed.)~~**

~~Pewter alloys containing lead in excess of 0.05% shall not be used as a food contact surface.~~

**12VAC5-421-1030. ~~Lead in solder and flux, use limitation. (Repealed.)~~**

~~Solder and flux containing lead in excess of 0.2% shall not be used as a food contact surface.~~

**12VAC5-421-1200. Pressure measuring devices, mechanical warewashing equipment.**

Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 1 pounds per square inch (7 kilopascals) or smaller and shall be accurate to  $\pm 2$  pounds per square inch ( $\pm 14$  kilopascals) in the 1525 pounds per square inch (100170 kilopascals) range in the range indicated on the manufacturer's data plate.

**12VAC5-421-1230. Dispensing equipment, protection of equipment and food.**

In equipment that dispenses or vends liquid food or ice in unpackaged form:

1. The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;
2. The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;
3. The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:
  - a. Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment, or
  - b. Available for self-service during hours when it is not under the full-time supervision of a food employee; and
4. The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

5. Dispensing equipment in which potentially hazardous food (time/temperature control for safety food) in homogenous liquid form is maintained outside of the temperature control requirements as specified in 12VAC5-421-820 C shall:

- a. Be specifically designed and equipped to maintain the commercial sterility of aseptically packaged food in a homogenous liquid form for a specified duration from the time of opening the packaging within the equipment; and
- b. Conform to the requirements for this equipment as specified in NSF/ANSI 18-2006 Manual Food and Beverage Dispensing Equipment.

**12VAC5-421-1260. Beverage tubing, separation.**

~~Beverage tubing and cold plate beverage cooling devices shall not be installed in contact with stored ice. This section does not apply to cold plates that are constructed integrally with an ice storage bin.~~

Except for cold plates that are constructed integrally with an ice storage bin, beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice.

**12VAC5-421-1310. Vending machines, automatic shutoff.**

A. A machine vending potentially hazardous food (time/temperature control for safety food) shall have an automatic control that prevents the machine from vending food:

1. If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that can not maintain food temperatures as specified under Part III (12VAC5-421-260 et seq.) of this chapter; and
2. If a condition specified under subdivision 1 of this subsection occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Part III.

B. When the automatic shutoff within a machine vending potentially hazardous food (time/temperature control for safety food) is activated:

1. In a refrigerated vending machine, the ambient temperature shall not exceed 41°F (5°C) for more than 30 minutes immediately after the machine is filled, serviced, or restocked; or
2. In a hot holding vending machine, the ambient temperature shall not be less than 135°F (57°C) for more than 120 minutes immediately after the machine is filled, serviced, or restocked.



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## **12VAC5-421-1420. Case lot handling equipment apparatuses, movability.**

~~Equipment Apparatuses~~, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

## **12VAC5-421-1440. ~~Food equipment, certification and classification. (Repealed.)~~**

~~Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program will be deemed to comply with Articles 1 (12VAC5-421-960 et seq.) and 2 (12VAC5-421-1080 et seq.) of this part.~~

## **12VAC5-421-1550. Fixed equipment, spacing or sealing.**

A. Equipment that is fixed because it is not easily movable shall be installed so that it is:

1. Spaced to allow access for cleaning along the sides, behind, and above the equipment;
2. Spaced from adjoining equipment, walls, and ceilings a distance of not more than 1/32 inch or 1 millimeter; or
3. Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

B. ~~Table mounted~~ Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

1. Sealed to the table; or
2. Elevated on legs as specified under 12VAC5-421-1560 D.

## **12VAC5-421-1560. Fixed equipment, elevation or sealing.**

A. Except as specified in subsections B and C of this section, floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 6 inch (15 centimeter) clearance between the floor and the equipment.

B. If no part of the floor under the floor-mounted equipment is more than 6 inches (15 centimeters) from the point of cleaning access, the clearance space may be only 4 inches (10 centimeters).

C. This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.

D. Except as specified in subsection E of this section, ~~table-mounted~~ counter-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 4-

inch (10 centimeter) clearance between the table and the equipment.

E. The clearance space between the table and ~~table-mounted~~ counter-mounted equipment may be:

1. Three inches (7.5 centimeters) if the horizontal distance of the table top under the equipment is no more than 20 inches (50 centimeters) from the point of access for cleaning; or
2. Two inches (5 centimeters) if the horizontal distance of the table top under the equipment is no more than 3 inches (7.5 centimeters) from the point of access for cleaning.

## **12VAC5-421-1690. Mechanical warewashing equipment, sanitization pressure.**

~~The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine shall not be less than 15 pounds per square inch (100 kilopascals) or more than 25 pounds per square inch (170 kilopascals) as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.~~

The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine, as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve, shall be within the range specified on the machine manufacturer's data plate and may not be less than five pounds per square inch (35 kilopascals) or more than 30 pounds per square inch (200 kilopascals).

### Article 7

#### Sanitization of Equipment and Utensils

## **12VAC5-421-1880. ~~Food contact surfaces and utensils. (Repealed.)~~**

~~Equipment food contact surfaces and utensils shall be sanitized.~~

### Article 7

#### Sanitization of Equipment and Utensils

## **12VAC5-421-1890. Before use after cleaning.**

Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.

## **12VAC5-421-1980. Food-contact surfaces.**

Lubricants as specified in 12VAC5-421-3420 shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

## **12VAC5-421-2040. Preset tableware.**

~~If tableware is preset:~~

1. ~~It shall be protected from contamination by being wrapped, covered, or inverted;~~

~~2. Exposed, unused settings shall be removed when a consumer is seated; or~~

~~3. Exposed, unused settings shall be cleaned and sanitized before further use if the settings are not removed when a consumer is seated.~~

A. Tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted.

B. When tableware is preset, exposed, unused settings shall be:

1. Removed when a consumer is seated; or
2. Cleaned and sanitized before further use if the settings are not removed when a consumer is seated.

**12VAC5-421-2190. Handwashing lavatory sink, water temperature, and flow.**

A. A handwashing lavatory sink shall be equipped to provide water at a temperature of at least 100°F (38°C) through a mixing valve or combination faucet.

B. A steam mixing valve shall not be used at a handwashing lavatory sink.

C. A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

**12VAC5-421-2230. Handwashing lavatory sinks, numbers, and capacities.**

A. Except as specified in subsection B of this section, at least one handwashing lavatory sink, or the number of handwashing lavatories sinks necessary for their convenient use by employees in areas specified under 12VAC5-421-2280, and not fewer than the number of handwashing lavatories sinks required by law shall be provided.

B. If approved, when food exposure is limited and handwashing lavatories sinks are not conveniently available, such as in some mobile or temporary food establishments or at some vending machine locations, employees may use chemically treated towelettes for handwashing.

**12VAC5-421-2280. Handwashing lavatory sinks, location.**

A handwashing lavatory sink shall be located:

1. To be readily accessible for use by employees in food preparation, food dispensing, and warewashing areas; and
2. In, or immediately adjacent to, toilet rooms.

**12VAC5-421-2310. Using a handwashing lavatory sink.**

A. A handwashing lavatory sink shall be maintained so that it is accessible at all times for employee use.

B. A handwashing lavatory sink shall not be used for purposes other than handwashing.

**12VAC5-421-2510. Establishment drainage system. (Repealed.)**

~~Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under 12VAC5-421-2180 A.~~

**12VAC5-421-2520. Backflow prevention.**

~~A. Except as specified in subsections B and C of this section, a direct connection shall not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.~~

~~B. If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 5 feet (1.5 m) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.~~

~~C. If allowed by law, a warewashing or culinary sink may have a direct connection.~~

~~A. Except as specified in subsections B, C, and D of this section, a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.~~

~~B. Subsection A of this section does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.~~

~~C. If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within five feet (1.5 meters) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.~~

~~D. If allowed by law, a warewashing or culinary sink may have a direct connection.~~

**Article 5  
Refuse, Recyclables, and Returnables**

**12VAC5-421-2590. Indoor storage area. (Repealed.)**

~~If located within the food establishment, a storage area for refuse, recyclables, and returnables shall meet the requirements specified under 12VAC5-421-2790, 12VAC5-421-2810 through 12VAC5-421-2880, 12VAC5-421-2930, and 12VAC5-421-2940.~~

**Article 5  
Refuse, Recyclables, and Returnables**

**12VAC5-421-2600. Outdoor storage surface.**

An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

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## 12VAC5-421-2630. Receptacles in vending machines.

A refuse receptacle shall not be located within a vending machine, except that a receptacle for beverage bottle crown closures may be located within a vending machine.

Except for a receptacle for a beverage bottle crown closures, a refuse receptacle may not be located within a vending machine.

### Part VI Physical Facilities

#### Article 1

#### Materials for Construction and Repair

## 12VAC5-421-2790. Indoor areas; surface characteristics.

A. Except as specified in subsection B of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

1. Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;
2. Closely woven and easily cleanable carpet for carpeted areas; and
3. Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

B. In a temporary food establishment:

1. A floor may be concrete, if graded to drain, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable approved materials that are effectively treated to control dust and mud; and
2. Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

#### Article 2

#### Design, Construction, and Installation

## 12VAC5-421-2810. Floors, walls, and ceilings -- cleanability.

~~Except as specified under 12VAC5-421-2840, the floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable, except that antislip floor coverings or applications may be used for safety reasons.~~

Except as specified under 12VAC5-421-2840 and except for anti-slip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable.

## 12VAC5-421-2920. Toilet rooms, enclosed.

A toilet room located on the premises shall be completely enclosed and provided with a tight fitting and self closing door except that this requirement does not apply to a toilet room that is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall.

Except where a toilet room is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door.

## 12VAC5-421-2950. Outdoor food vending areas, overhead protection.

~~If located outside, a machine used to vend food shall be provided with overhead protection except that machines vending canned beverages need not meet this requirement.~~

Except for machines that vend canned beverages, if located outside, a machine used to vend food shall be provided with overhead protection.

## 12VAC5-421-2960. Outdoor servicing areas, overhead protection.

~~Servicing areas shall be provided with overhead protection except that areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, need not be provided with overhead protection.~~

Except for areas used only for the loading of water or the discharge of sewage or other liquid waste, through the use of a closed system of hoses, servicing areas shall be provided with overhead protection.

#### Article 3

#### Numbers and Capacities

## 12VAC5-421-3010. ~~Handwashing lavatories, minimum number. (Repealed.)~~

~~Handwashing lavatories shall be provided as specified under 12VAC5-421-2230.~~

#### Article 3

#### Numbers and Capacities

## 12VAC5-421-3020. Handwashing cleanser, availability.

Each handwashing lavatory sink or group of two adjacent lavatories handwashing sinks shall be provided with a supply of hand cleaning liquid, powder, or bar soap.

## 12VAC5-421-3030. Hand drying provision.

Each handwashing lavatory sink or group of adjacent lavatories handwashing sinks shall be provided with:

1. Individual, disposable towels;
2. A continuous towel system that supplies the user with a clean towel; or
3. A heated-air hand drying device.

**12VAC5-421-3040. Handwashing aids and devices, use restrictions.**

A sink used for food preparation or utensil washing shall not be provided with the handwashing aids and devices required for a handwashing lavatory sink as specified under 12VAC5-421-3020 and 12VAC5-421-3030 and 12VAC5-421-2650 C.

**12VAC5-421-3045. Handwashing signage.**

A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing lavatories sinks used by food employees and shall be clearly visible to food employees.

**12VAC5-421-3050. Disposable towels, waste receptacle. (Repealed.)**

~~A handwashing lavatory or group of adjacent lavatories that is provided with disposable towels shall be provided with a waste receptacle as specified under 12VAC5-421-2650 C.~~

**12VAC5-421-3060. Toilets and urinals, minimum number. (Repealed.)**

~~Toilets and urinals shall be provided as specified under 12VAC5-421-2240.~~

**12VAC5-421-3080. Lighting, intensity.**

The light intensity shall be:

1. At least 10 foot candles ~~(110 lux)~~ (108 lux) at a distance of 30 inches (75 cm) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;
2. At least 20 foot candles ~~(220 lux)~~ (215 lux):
  - a. At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption;
  - b. Inside equipment such as reach-in and under-counter refrigerators;
  - c. At a distance of 30 inches (75 cm) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and
3. At least 50 foot candles (540 lux) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

**12VAC5-421-3110. Service sinks, availability. (Repealed.)**

~~A service sink or curbed cleaning facility shall be provided as specified under 12VAC5-421-2250.~~

Article 4  
Location and Placement

**12VAC5-421-3120. Handwashing lavatories, conveniently located. (Repealed.)**

~~Handwashing lavatories shall be conveniently located as specified under 12VAC5-421-2280.~~

Article 4  
Location and Placement

**12VAC5-421-3130. Toilet rooms, convenience and accessibility.**

Toilet rooms shall be conveniently located and accessible to employees during all hours of operation. Toilet rooms intended for use by customers shall not necessitate travel through food preparation or handling areas.

**12VAC5-421-3160. Refuse, recyclables, and returnables -- receptacles, waste handling units, and designated storage areas. (Repealed.)**

~~Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified under 12VAC5-421-2680.~~

**12VAC5-421-3180. Cleaning, frequency and restrictions.**

A. The physical facilities shall be cleaned as often as necessary to keep them clean.

~~B. Cleaning shall be done during periods when the least amount of food is exposed such as after closing. This requirement does not apply to cleaning that is necessary due to a spill or other accident.~~

B. Except for cleaning that is necessary due to a spill or other accident, cleaning shall be done during periods when the least amount of food is exposed such as after closing.

**12VAC5-421-3240. Maintaining and using handwashing lavatories Cleaning of Plumbing Fixtures.**

~~Handwashing lavatories shall be kept clean, and maintained and used as specified under 12VAC5-421-2310. Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean and maintained and used as specified under 12VAC5-421-2310.~~

**12VAC5-421-3460. Medicines -- restriction and storage.**

~~A. Only those medicines that are necessary for the health of employees shall be allowed in a food establishment. This section does not apply to medicines that are stored or displayed for retail sale.~~

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# Regulations

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~~B. Medicines that are in a food establishment for the employees' use shall be labeled as specified under 12VAC5-421-3320 and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.~~

A. Except for medicines that are stored or displayed for retail sale, only those medicines that are necessary for the health of employees shall be allowed in a food establishment.

B. Medicines that are in a food establishment for the employees' use shall be labeled as specified under 12VAC5-421-3320 and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.

## **12VAC5-421-3750. Responsibilities of the permit holder.**

Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:

1. Post the permit in a location in the food establishment that is conspicuous to consumers;
2. Comply with the provisions of this chapter including the conditions of a granted variance as specified under 12VAC5-421-3590, and approved plans as specified under 12VAC5-421-3610;
3. If a food establishment is required under 12VAC5-421-3620 to operate under a HACCP plan, comply with the plan as specified under 12VAC5-421-3590;
4. Immediately contact the regulatory authority to report an illness of a food employee as specified under ~~12VAC5-421-120~~ 12VAC5-421-80 B;
5. Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified under 12VAC5-421-3910;
6. Allow representatives of the regulatory authority access to the food establishment as specified under 12VAC5-421-3820;
7. Replace existing facilities and equipment specified in 12VAC5-421-3510 with facilities and equipment that comply with this chapter if:
  - a. The regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;
  - b. The regulatory authority directs the replacement of the facilities and equipment because of a change of ownership; or
  - c. The facilities and equipment are replaced in the normal course of operation;

8. Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies;

9. Accept notices issued and served by the regulatory authority according to law; and

10. Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this chapter or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

## **12VAC5-421-3815. Competency of environmental health specialists.**

An authorized representative of the commissioner who inspects a food establishment or conducts plan review for compliance with this chapter shall have the knowledge, skills, and ability to adequately perform the required duties.

## **12VAC5-421-3860. Documenting information and observations.**

The regulatory authority shall document on an inspection report form:

1. Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under 12VAC5-421-3700, inspection date, and other information such as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required; and
2. Specific factual observations of violative conditions or other deviations from this chapter that require correction by the permit holder including:
  - a. Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this chapter specified under 12VAC5-421-60;
  - b. Failure of food employees and the person in charge to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified under ~~12VAC5-421-110 and 12VAC5-421-120~~ 12VAC5-421-80 B and D;
  - c. Nonconformance with critical items of this chapter;
  - d. Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under 12VAC5-421-60;

e. Failure of the person in charge to provide records required by the regulatory authority for determining conformance with a HACCP plan as specified under subdivision 4 f of 12VAC5-421-3630; and

f. Nonconformance with critical limits of a HACCP plan.

**12VAC5-421-4040. Investigation and control, obtaining information: personal history of illness, medical examination, and specimen analysis.**

~~The regulatory authority shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:~~

The regulatory authority shall act when it has reasonable cause to believe that a food employee or conditional employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

1. Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and
2. Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees.

**12VAC5-421-4050. Restriction or exclusion of food employee, or summary suspension of permit.**

Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee, conditional employee, or permit holder instituting one or more of the following control measures:

1. Restricting the food employee or conditional employee;
2. Excluding the food employee or conditional employee; or
3. Closing the food establishment by summarily suspending a permit to operate in accordance with law.

**12VAC5-421-4070. Release of food employee from restriction or exclusion.**

~~The regulatory authority shall release a food employee from restriction or exclusion according to law and the following conditions:~~

~~1. A food employee who was infected with Salmonella typhi if the food employee's stools are negative for S. typhi based on testing of at least three consecutive stool specimen cultures that are taken:~~

- a. ~~Not earlier than one month after onset;~~
- b. ~~At least 48 hours after discontinuance of antibiotics;~~ and
- c. ~~At least 24 hours apart; and~~

~~2. If one of the cultures taken as specified in subdivision 1 of this section is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained.~~

~~3. A food employee who was infected with Shigella spp. or Shiga toxin producing Escherichia coli if the employee's stools are negative for Shigella spp. or Shiga toxin-producing Escherichia coli based on testing of two consecutive stool specimen cultures that are taken:~~

- a. ~~Not earlier than 48 hours after discontinuance of antibiotics; and~~
- b. ~~At least 24 hours apart.~~

~~4. A food employee who was infected with hepatitis A virus if:~~

- a. ~~Symptoms cease; or~~
- b. ~~At least two blood tests show falling liver enzymes.~~

The regulatory authority shall release a food employee, or conditional employee from restriction or exclusion according to law and the conditions specified under 12VAC5-421-100.

VA.R. Doc. No. R09-1079; Filed July 31, 2009, 9:58 a.m.

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**Final Regulation**

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-690).**

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# Regulations

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Statutory Authority: § 32.1-325 of the Code of Virginia; Title XIX of the Social Security Act (42 USC § 1396 et seq.).

Effective Date: October 1, 2009.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Summary:

*This action incorporates into the Virginia Administrative Code (VAC), for the purpose of maintaining the necessary consistency between the VAC and the State Plan for Medical Assistance Services, language issued by the Centers for Medicare and Medicaid Services to be included in the State Plan. The language establishes DMAS' compliance with § 1932(d)(1) of the Social Security Act and 42 CFR 438.610 prohibiting managed care organizations from having affiliations with individuals who have been suspended or otherwise excluded from federal health care programs.*

**12VAC30-10-690. Exclusion of providers and suspension of practitioners and other individuals.**

A. All of the requirements of 42 CFR 1002, Subpart B are met.

In addition to meeting all federal requirements, the agency, under the authority of State state law, imposes broader sanctions.

B. The Medicaid agency meets the requirements of:

1. § 1902(p) of the Act by excluding from participation— :
  - a. At the State's state's discretion, any individual or entity for any reason for which the Secretary could exclude the individual or entity from participation in a program under Title XVIII in accordance with § 1128, 1128A, or 1866(b)(2).
  - b. Any HMO (as defined in § 1903(m) of the Act) or an entity furnishing services under a waiver approved under § 1915(b)(1) of the Act, that— :
    - (1) Could be excluded under § 1128(b)(8) relating to owners and managing employees who have been convicted of certain crimes or received other sanctions; or
    - (2) Has, directly or indirectly, a substantial contractual relationship (as defined by the Secretary) with an individual or entity that is described in § 1128(b)(8)(B) of the Act.

2. An MCO, PIHP, PAHP, or PCCM may not have prohibited affiliations with individuals (as defined in 42 CFR 438.610(b)) who are debarred, suspended, or

otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549. If the Commonwealth finds that an MCO, PCCM, PIHP, or PAHP is not in compliance, the Commonwealth will comply with the requirements of 42 CFR 438.610(c).

3. § 1902(a)(39) of the Act by— :

- a. Excluding an individual or entity from participation for the period specified by the Secretary, when required by the Secretary to do so in accordance with § 1128 or 1128A of the Act; and
- b. Providing that no payment will be made with respect to any item or service furnished by an individual or entity during this period.

C. The Medicaid agency meets the requirements of— :

1. § 1902(a)(41) of the Act with respect to prompt notification to HCFA whenever a provider is terminated, suspended, sanctioned, or otherwise excluded from participating under this State state plan; and
2. § 1902(a)(49) of the Act with respect to providing information and access to information regarding sanctions taken against health care practitioners and providers by State state licensing authorities in accordance with § 1921 of the Act.

VA.R. Doc. No. R09-2073; Filed August 12, 2009, 11:46 a.m.

## STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

### Fast-Track Regulation

Title of Regulation: **12VAC35-12. Public Participation Guidelines (amending 12VAC35-12-10, 12VAC35-12-20).**

Statutory Authority: §§ 2.2-4007-02 and 37.2-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on September 30, 2009.

Effective Date: October 15, 2009.

Agency Contact: Linda Grasewicz, Policy Analyst, Department of Behavioral Health and Developmental Services, Jefferson Bldg., 1220 Bank St., 12th Floor, Richmond, VA 23219, telephone (804) 786-0040, FAX (804) 371-0092, or email linda.grasewicz@co.dmhmrsva.virginia.gov.

Basis: The board has the authority to adopt these regulations under § 37.2-203 of the Code of Virginia. It is required to

develop and adopt public participation guidelines to solicit the input of interested parties in the development of its regulations under § 2.2-4007.02 of the Code of Virginia.

**Purpose:** The amendment allows the department to comply with the requirements of the Administrative Process Act (APA), (§ 2.2-4007 of the Code of Virginia). The APA requires each agency of state government that is empowered by basic laws to make regulations to adopt and use public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations.

Chapter 781 of the 2009 Virginia Acts of Assembly requires the department (not the board) to adopt emergency regulations under Item 315 DD. This means that the department must have public participation guidelines under the APA.

The proposed amendment expands the scope of the board's public participation guidelines to define the department as an "agency" that must involve the public in the development of its regulations. Currently, these public participation guidelines apply only to the board. The amendment will ensure that the public has the opportunity to participate in the development regulations that are required pursuant to the agency's basic law. This public participation will help to protect the health, safety, and welfare of Virginia citizens.

**Rationale for Using Fast-Track Process:** This amendment will not alter or affect the processes that are established by the board's current public participation guidelines. The current regulations are model public participation guidelines adopted by the board in 2008 pursuant to Chapter 321 of the 2008 Acts of Assembly. These model regulations were developed to standardize the public participation process so that interested members of the public know how and when to comment or participate in regulatory actions that affect or interest them. This amendment expands the scope of the board's regulations to require the department to comply with this standard public participation process. It is intended to provide the opportunity for public participation in the department's regulatory processes according to the APA and is not expected to be controversial.

The amendment will also change the name of the department and the board consistent with legislation passed by Chapter 840 of the 2009 Acts of Assembly. This name change will not have any impact on the public participation process or regulatory requirements and is not expected to be controversial.

**Substance:** There are no new substantive provisions or substantive changes to the existing sections of the regulations.

**Issues:** The primary advantage of this regulatory action is that it will facilitate the participation of the interested members of the public in the regulatory activities undertaken by the department.

This action allows the department to comply with APA requirements and should enable it to develop regulations that are consistent with the legal authority, are responsive to the public need, are not overly burdensome, and protect the health, safety and welfare of Virginia citizens.

There are no known disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Mental Health, Mental Retardation and Substance Abuse Services Board (Board) proposes to amend its Public Participation Guidelines to include rulemaking actions taken by the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and to enact a statutorily required name change.

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

Estimated Economic Impact. Currently, the "agency" that is subject to these regulations is defined as solely being the Board. Since both the Board and the Department (DMHMRSAS) have regulatory authority, the Board proposes to amend these regulations so that the Department is specifically included in the "agency" definition. This change will benefit the public by ensuring that they have the same opportunity to be involved in the rulemaking process no matter which entity (the Board or the Department) has initiated it. No entity is likely to incur any costs on account of this amendment.

This year the General Assembly passed a law which changed the name of the Department of Mental Health, Mental Retardation and Substance Abuse Services to the Department of Behavioral Health and Developmental Services. The Board proposes to amend these regulations to account for this statutory change. DMHMRSAS, and other agencies that have regulations that name DMHMRSAS, will likely incur some one-time costs associated with rewriting regulations and reprinting any promotional materials that mention DMHMRSAS.

Businesses and Entities Affected. This regulatory action will affect all state agencies and private individuals who might be interested in participating in the rulemaking process. DMHMRSAS is unsure of how many entities this might be but reports that, as of May 1, 2009, there were 163 registered Town Hall users that were signed up to receive notice of any regulatory actions from the agency.

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.



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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 agency concurs with the economic impact analysis prepared by the Department of Planning and Budget.

## Summary:

*This action amends the board's public participation regulations to include the rulemaking processes that are undertaken by the department. The current regulations are applicable only to the State Mental Health Mental Retardation and Substance Abuse Services Board. The stated purpose of these regulations in 12VAC35-12-10 and the definition of "agency" in 12VAC23-12-20 are changed to include both the department and the board. This change*

*will allow the the department to comply with the requirements in § 2.2-4007.02 of the Code of Virginia to facilitate public participation in the formation and development of its regulations.*

*This action also replaces the name State Mental Health, Mental Retardation and Substance Abuse Services Board with State Board of Behavioral Health and Developmental Services (hereinafter referred to as the board) and names the current Department of Mental Health, Mental Retardation Substance Abuse Services as the Department of Behavioral Health and Developmental Services (hereinafter referred to as the department) consistent with Chapter 840 of the 2009 Acts of Assembly. This change became effective on July 1, 2009.*

## Part I

### Purpose and Definitions

#### **12VAC35-12-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the State ~~Mental Health, Mental Retardation and Substance Abuse Services Board~~ of Behavioral Health and Developmental Services and the Department of Behavioral Health and Developmental Services. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

#### **12VAC35-12-20. Definitions.**

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the ~~State Mental Health, Mental Retardation and Substance Abuse Services Board, which is the unit entity~~ of state government empowered by the agency's basic law to make regulations or decide cases. This term includes the State Board of Behavioral Health and Developmental Services and the Department of Behavioral Health and Developmental Services. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of

a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

V.A.R. Doc. No. R09-1900; Filed August 11, 2009, 3:35 p.m.



## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

#### Proposed Regulation

**Title of Regulation:** 18VAC110-20. Regulations Governing the Practice of Pharmacy (adding 18VAC110-20-25).

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

**Public Hearing Information:**

September 2, 2009 - 9 a.m. - Department of Health Professions, 9960 Mayland Drive, Perimeter Center, 2nd Floor Conference Center, Richmond, VA

**Public Comments:** Public comments may be submitted until 5 p.m. on October 30, 2009.

**Agency Contact:** Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email [scotti.russell@dhp.virginia.gov](mailto:scotti.russell@dhp.virginia.gov).

**Basis:** Section 54.1-2400 of the Code of Virginia provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system.

**Purpose:** The 2007 General Assembly amended the statutes relating to grounds for denial or disciplinary action against a license by the Board of Pharmacy. The previous, very narrowly defined section relating to "unprofessional conduct" was repealed and those activities specifically listed in § 54.1-3316 (11) and (12) as grounds for disciplinary action. In addition, § 54.1-3316 (4) was expanded to include unprofessional conduct specified in regulations promulgated by the board. The intent of this action is to promulgate such regulations.

After utilizing regulations from other boards and a compilation of unprofessional conduct regulations from other states to determine those provisions that should be set out in Virginia regulation, the board developed regulatory language to ensure that it has the necessary authority to protect the public health and safety from unprofessional conduct or substandard care.

**Substance:** The board has added 18VAC110-20-25, which provides that certain practices shall constitute unprofessional conduct within the meaning § 54.1-3316 of the Code of Virginia.

**Issues:** The primary advantage of this proposal is greater protection for the public by having clearer, more definitive language about behaviors and actions that may constitute unprofessional conduct in a pharmacy.

There are no disadvantages of these provisions to the agency or the Commonwealth; more specific provisions in regulation

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to supplement those stated in the Code of Virginia will allow more explicit charges in a disciplinary notice, which will be beneficial to both the agency and the respondent. The board does not anticipate more than a four or five additional disciplinary proceedings or notices of disciplinary action, because it currently manages to state the charges for such conduct under general provisions of the Code of Virginia. There are no other pertinent matters.

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

Summary of the Proposed Amendments to Regulation. Pursuant to 2007 General Assembly House Bill 2649, the Board of Pharmacy (Board) proposes to add a new section to these regulations to establish the types of behavior that constitute unprofessional conduct. HB 2649 repealed the previous, narrowly-defined Code section relating to "unprofessional conduct" and replaced it with language that expanded Virginia Code § 54.1-3316 by stating that unprofessional conduct would include that which is "specified in regulations promulgated by the Board."

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

Estimated Economic Impact. The proposed regulation would specify the following as grounds for unprofessional conduct: 1) a violation of patient privacy or other provisions in the Health Records Act, 2) willful or negligent breaching of patient confidentiality, 3) failure to maintain the confidentiality of information received from the Prescription Monitoring Program, obtaining such information for reasons other than to assist in determining the validity of a prescription to be filled, or misusing information received from the program, 4) engaging in disruptive or abusive behavior that interferes with or adversely affects patient care, 5) engaging in conduct constituting a boundary violation that would include a situation in which the licensee is in a position to take advantage of a patient or his family, 6) failure to maintain adequate safeguards against the diversion of controlled substances, 7) failure to appropriately respond to a known dispensing error, 8) delegating a task to someone not adequately trained to perform that task, 9) failure by the pharmacist in charge to ensure that pharmacy interns and pharmacy technicians are currently registered, and 10) failure to exercise professional judgment in determining whether a prescription meets the requirements of law prior to dispensing.

According to the Department of Health Professions (DHP), specifying the types of behavior that constitute unprofessional conduct will allow more explicit charges in a disciplinary notices, but will not cause a large increase in the number of disciplinary actions conducted since the Board currently manages to state the charges for such conduct under general provisions of the Code. In calendar year 2008 the Board received 301 disciplinary cases and closed 426. Out of the

426 cases closed by the Board of Pharmacy in calendar year 2008, 221 were closed as "no violation" or "undetermined." The rest were closed with some type of finding, or by confidential consent agreement. The Board estimates that specifying unprofessional conduct in regulation will in practice produce no more than 4 or 5 additional cases annually.

Specifying what constitutes unprofessional conduct will be beneficial for pharmacy professionals and the public in that there will be less uncertainty and fewer misunderstandings concerning what conduct is subject to discipline. There are no obvious costs associated with the proposed specificity.

Businesses and Entities Affected. The proposed amendments affect the 9964 pharmacists, 1396 pharmacy interns, 9502 pharmacy technicians, 1688 resident pharmacies, and 544 non-resident pharmacies regulated by the Virginia Board of Pharmacy.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal 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 small businesses.

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

Real Estate Development Costs. The proposed amendments do not 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.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC110-20, Regulations Governing the Practice of Pharmacy relating to regulations for unprofessional conduct.

**Summary:**

*The proposed regulatory action adds a section on unprofessional conduct to address certain issues and licensee conduct that have been problematic and to supplement the statutory provision in § 54.1-3316 of the Code of Virginia that establishes grounds for disciplinary action based on unprofessional conduct specified in regulations promulgated by the board. The amendments include, but are not limited to, patient confidentiality, unethical behavior, sexual misconduct, failure to report a known dispensing error in a manner that protects the public, and inappropriate delegation of pharmacy acts to subordinates.*

**18VAC110-20-25. Unprofessional conduct.**

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-3316 of the Code of Virginia:

1. Failing to comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records or related to provision of patient records to another practitioner or to the patient or his personal representative;
2. Willfully or negligently breaching the confidentiality of a patient unless otherwise required or permitted by applicable law;
3. Failing to maintain confidentiality of information received from the Prescription Monitoring Program, obtaining such information for reasons other than to assist in determining the validity of a prescription to be filled, or misusing information received from the program;
4. Engaging in disruptive or abusive behavior in a pharmacy or other health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient;
5. Engaging or attempting to engage in a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or his

family, including but not limited to sexual misconduct with a patient or a member of his family or other conduct that results or could result in personal gain at the expense of the patient;

6. Failing to maintain adequate safeguards against diversion of controlled substances;

7. Failing to appropriately respond to a known dispensing error in a manner that protects the health and safety of the patient;

8. Delegating a task within the practice of pharmacy to a person who is not adequately trained to perform such a task;

9. Failing by the PIC to ensure that pharmacy interns and pharmacy technicians working in the pharmacy are registered and that such registration is current; or

10. Failing to exercise professional judgment in determining whether a prescription meets requirements of law before dispensing.

VA.R. Doc. No. R08-1341; Filed August 10, 2009, 9:54 a.m.

**BOARD OF PHYSICAL THERAPY**

**Final Regulation**

**Title of Regulation:** 18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-10, 18VAC112-20-40, 18VAC112-20-50, 18VAC112-20-60, 18VAC112-20-65, 18VAC112-20-70, 18VAC112-20-90, 18VAC112-20-120, 18VAC112-20-131, 18VAC112-20-135, 18VAC112-20-136, 18VAC112-20-140, 18VAC112-20-150; adding 18VAC112-20-160, 18VAC112-20-170, 18VAC112-20-180, 18VAC112-20-190, 18VAC112-20-200).

**Statutory Authority:** § 54.1-2400 and Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1 of the Code of Virginia.

**Effective Date:** September 30, 2009.

**Agency Contact:** Lisa R. Hahn, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

**Summary:**

*The amendments clarify certain definitions and requirements for practice by physical therapists, simplify regulations for trainees, specify the additional training or course work required to retake the examination after three failures, add evidence of competency for licensure by endorsement, clarify the responsibilities of a physical therapist in the evaluation and discharge of a patient, modify the requirements for renewal or reinstatement of licensure, and add provisions on standards of professional practice and grounds for unprofessional conduct.*

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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 General Provisions

### 18VAC112-20-10. Definitions.

In addition to the words and terms defined in § 54.1-3473 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active practice" means a minimum of 160 hours of professional practice as a physical therapist or physical therapist assistant within the 24-month period immediately preceding renewal. Active practice may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

"Approved program" means an educational program accredited by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association.

"CLEP" means the College Level Examination Program.

"Contact hour" means 60 minutes of time spent in continuing learning activity exclusive of breaks, meals or vendor exhibits.

"Direct supervision" means a physical therapist or a physical therapist assistant is physically present and immediately available and is fully responsible for the physical therapy tasks or activities being performed.

"Discharge" means the discontinuation of interventions in [ a single an ] episode of care that have been provided in an unbroken sequence [ in a single practice setting ] and related to the physical therapy interventions for a given condition or problem.

"Evaluation" means the examination, assessment or screening of a patient a process in which the physical therapist makes clinical judgments based on data gathered during an examination [ or screening ] in order to plan and implement a treatment intervention, provide preventive care, reduce risks of injury and impairment, or provide for consultation.

"Face-to-face" means learning activities or courses obtained in a group setting or through interactive, real-time technology.

"FCCPT" means the Foreign Credentialing Commission on Physical Therapy.

"General supervision" means a physical therapist shall be available for consultation.

"National examination" means the examinations developed and administered by the Federation of State Boards of Physical Therapy and approved by the board for licensure as a physical therapist or physical therapist assistant.

"Support personnel" means a person who is performing designated routine tasks related to physical therapy under the direction and supervision of a physical therapist or physical therapist assistant within the scope of this chapter.

"TOEFL" means the Test of English as a Foreign Language.

"Trainee" means a person seeking licensure as a physical therapist or physical therapist assistant who is undergoing a traineeship.

~~1. "Foreign educated trainee" means a physical therapist or physical therapist assistant who was educated outside the United States and did not graduate from an approved program and who is seeking licensure to practice in Virginia.~~

~~2. "Inactive practice trainee" means a physical therapist or physical therapist assistant who has previously been licensed and has not practiced for at least 320 hours within the past four years and who is seeking licensure or relicensure in Virginia.~~

~~3. "Unlicensed graduate trainee" means a graduate of an approved physical therapist or physical therapist assistant program who has not taken the national examination or who has taken the examination but not yet received a license from the board.~~

"Traineeship" means a period of active clinical practice during which an unlicensed applicant for licensure as a physical therapist or physical therapist assistant works under the direct supervision of a physical therapist approved by the board.

"TSE" means the Test of Spoken English.

"Type 1" means face-to face continuing learning activities offered by an approved organization as specified in 18VAC112-20-131.

"Type 2" means continuing learning activities which may or may not be offered by an approved organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning.

### 18VAC112-20-40. Education requirements: graduates of approved programs.

A. An applicant for licensure who is a graduate of an approved program shall submit documented evidence of his graduation from such a program with the required application and fee.

B. If an applicant is a graduate of an approved program located outside of the United States or Canada, he shall provide proof of proficiency in the English language by

passing TOEFL and TSE or the TOEFL iBT, the Internet-based tests of listening, reading, speaking and writing by a score determined by the board or an equivalent examination approved by the board. TOEFL iBT or TOEFL and TSE may be waived upon evidence of English proficiency that the applicant's physical [therapist assistant therapy] program was taught in English or that the native tongue of the applicant's nationality is English.

**18VAC112-20-50. Education requirements: graduates of schools not approved by an accrediting agency approved by the board.**

A. An applicant for initial licensure as a physical therapist who is a graduate of a school not approved by an accrediting agency approved by the board shall submit the required application and fee and provide documentation of the physical therapist's certification by a report from the FCCPT or of the physical therapist eligibility for licensure as verified by a report from any other credentialing agency approved by the board that substantiates that the physical therapist has been evaluated in accordance with requirements of subsection B of this section.

B. The board shall only approve a credentialing agency that:

1. Utilizes the Coursework Evaluation Tool for Foreign Educated Physical Therapists of the Federation of State Boards of Physical Therapy and utilizes original source documents to establish substantial equivalency to an approved physical therapy program;
2. Conducts a review of any license or registration held by the physical therapist in any country or jurisdiction to ensure that the license or registration is current and unrestricted or was unrestricted at the time it expired or was lapsed; and
3. Verifies English language proficiency by passage of the TOEFL and TSE examination or the TOEFL iBT, the Internet-based tests of listening, reading, speaking and writing or by review of ~~other~~ evidence of English proficiency that the applicant's physical therapy program was taught in English or that the native tongue of the applicant's nationality is English.

C. An applicant for licensure as a physical therapist assistant who is a graduate of a school not approved by the board shall submit with the required application and fee the following:

1. Proof of proficiency in the English language by passing TOEFL and TSE or the TOEFL iBT, the Internet-based tests of listening, reading, speaking and writing by a score determined by the board or an equivalent examination approved by the board. TOEFL iBT or TOEFL and TSE may be waived upon evidence of English proficiency that the applicant's physical therapist assistant program was taught in English or that the native tongue of the applicant's nationality is English.

2. A copy of the original certificate or diploma that has been certified as a true copy of the original by a notary public, verifying his graduation from a physical therapy curriculum. If the certificate or diploma is not in the English language, submit either:

- a. An English translation of such certificate or diploma by a qualified translator other than the applicant; or
- b. An official certification in English from the school attesting to the applicant's attendance and graduation date.

3. Verification of the equivalency of the applicant's education to the educational requirements of an approved program for physical therapist assistants from a scholastic credentials service approved by the board.

D. An applicant for initial licensure as a physical therapist or a physical therapist assistant who is not a graduate of an approved program shall also submit verification of having successfully completed a full-time 1,000-hour traineeship ~~as a "foreign educated trainee"~~ under the direct supervision of a licensed physical therapist.

~~1. The traineeship shall be in a facility that serves as an education facility for students enrolled in an accredited program educating physical therapists in Virginia and is approved by the board~~ accordance with requirements in 18VAC112-20-140.

~~1. It shall be the responsibility of the foreign educated trainee to make the necessary arrangements for his training with the director of physical therapy or the director's designee at the facility selected by the trainee.~~

~~2. The physical therapist supervising the foreign educated trainee shall submit a completed physical therapy or physical therapist assistant clinical performance instrument approved by the board.~~

~~3. If the traineeship is not successfully completed, the president of the board or his designee shall determine if a new traineeship shall commence. If it is determined by the board that a new traineeship shall not commence, then the application for licensure shall be denied.~~

~~4. The second traineeship may be served under a different supervising physical therapist and may be served in a different organization than the initial traineeship. If the second traineeship is not successfully completed, as determined by the supervising physical therapist, then the application for licensure shall be denied.~~

~~5.~~ 2. The traineeship requirements of this part may be waived if the applicant for a license can verify, in writing, the successful completion of one year of clinical physical therapy practice as a licensed physical therapist or physical therapist assistant in the United States, its territories, the

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District of Columbia, or Canada, equivalent to the requirements of this chapter.

## **18VAC112-20-60. Requirements for licensure by examination.**

A. Every applicant for initial licensure by examination shall submit:

1. Documentation of having met the educational requirements specified in 18VAC112-20-40 or 18VAC112-20-50;
2. The required application, fees and credentials to the board; and
3. Documentation of passage of the national examination as prescribed by the board.

B. If an applicant fails the national examination three times, he shall apply for approval to sit for any subsequent examination by submission of evidence satisfactory to the board of having successfully completed ~~additional clinical training or course work in the deficiency areas of the examination~~ the following requirements:

1. Provide the board with a copy of the deficiency report from the examination;
2. Review areas of deficiency with the applicant's physical therapy educational program and develop a plan, which may include additional clinical training or coursework, to address deficiency areas; and
3. Take an examination review course and the practice examination.

## **18VAC112-20-65. Requirements for licensure by endorsement.**

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may be licensed in Virginia by endorsement.

B. An applicant for licensure by endorsement shall submit:

1. Documentation of having met the educational requirements prescribed in 18VAC112-20-40 or 18VAC112-20-50. In lieu of meeting such requirements, an applicant may provide evidence of clinical practice during the five years immediately preceding application for licensure in Virginia with a current, unrestricted license issued by another U.S. jurisdiction;
2. The required application, fees, and credentials to the board; ~~and~~
3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB) and a current report from the National Practitioner Data Bank (NPDB);

4. Evidence of completion of 15 hours of continuing education for each year in which the applicant held a license in another U.S. jurisdiction, or 60 hours obtained within the past four years; and

~~3.~~ 5. Documentation of passage of an examination equivalent to the Virginia examination at the time of initial licensure or documentation of passage of an examination required by another state at the time of initial licensure in that state and active, clinical practice with a current, unrestricted license for at least five years prior to applying for licensure in Virginia.

For the purpose of this subsection, active, clinical practice shall mean at least 2,500 hours of patient care over a five-year period.

C. A physical therapist or physical therapist assistant seeking licensure by endorsement who has not actively practiced physical therapy for at least ~~160~~ 320 hours within the ~~two~~ four years immediately preceding his application for licensure shall first successfully complete a ~~480 hour~~ 480 hours in a traineeship as ~~specified by subsection B of in~~ accordance with requirements in 18VAC112-20-140.

## **18VAC112-20-70. Traineeship for unlicensed graduate scheduled to sit for the national examination.**

A. Upon approval of the president of the board or his designee, an unlicensed graduate ~~trainee in Virginia~~ may be employed as a trainee under the direct supervision of a licensed physical therapist until the results of the national examination are received.

B. The traineeship, which shall be in accordance with requirements in 18VAC112-20-140, shall terminate two working days following receipt by the candidate of the licensure examination results.

C. The unlicensed graduate may reapply for a new traineeship while awaiting to take the next examination. A new traineeship shall not be approved for more than one year following the receipt of the first examination results.

## **18VAC112-20-90. General responsibilities.**

A. The physical therapist shall be responsible for managing all aspects of the physical therapy care of each patient and shall provide:

1. The initial evaluation for each patient and its documentation in the patient record; and
2. Periodic evaluations [ ~~prior to patient discharge~~ ], including documentation of the patient's response to therapeutic intervention.
3. The documented [ ~~discharge~~ status ] of the patient [ at the time of discharge ], including the response to therapeutic intervention [ ~~at the time of discharge~~ ].

B. The physical therapist shall communicate the overall plan of care to the patient or his legally authorized representative and shall also communicate with a referring doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery, nurse practitioner or physician assistant to the extent required by § 54.1-3482 of the Code of Virginia.

C. A physical therapist assistant may assist the physical therapist in performing selected components of physical therapy intervention to include treatment, measurement and data collection, but not to include the performance of an evaluation as defined in 18VAC112-20-10.

D. A physical therapist assistant's visits to a patient may be made under general supervision.

E. A physical therapist providing services with a direct access certification as specified in § 54.1-3482 of the Code of Virginia shall utilize the Direct Access Patient Attestation and Medical Release Form prescribed by the board or otherwise include in the patient record the information, attestation and written consent required by subsection B of § 54.1-3482 of the Code of Virginia.

**18VAC112-20-120. Responsibilities to patients.**

A. The initial patient visit shall be made by the physical therapist for evaluation of the patient and establishment of a plan of care.

B. The physical therapist assistant's first visit with the patient shall only be made after verbal or written communication with the physical therapist regarding patient status and plan of care. Documentation of such communication shall be made in the patient's record.

C. Documentation of physical therapy interventions shall be recorded on a patient's record by the physical therapist or physical therapist assistant providing the care.

D. The physical therapist shall reevaluate the patient as needed, but not less than according to the following schedules:

1. For inpatients in hospitals as defined in § 32.1-123 of the Code of Virginia, it shall be not less than once every seven consecutive days.
2. For patients in other settings, it shall be not less than one of 12 visits made to the patient during a 30-day period, or once every 30 days from the last evaluation, whichever occurs first.

Failure to abide by this subsection due to the absence of the physical therapist in case of illness, vacation, or professional meeting, for a period not to exceed five consecutive days, will not constitute a violation of these provisions.

E. The physical therapist shall be responsible for ongoing involvement in the care of the patient to include regular

communication with a physical therapist assistant regarding the patient's plan of treatment.

**18VAC112-20-131. Continued competency requirements for renewal of an active license.**

A. In order to renew an active license biennially ~~after December 31, 2003~~, a physical therapist or a physical therapist assistant shall complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. In choosing continuing learning activities or courses, the licensee shall consider the following: (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

B. To document the required hours, the licensee shall maintain the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of the following:

1. A minimum of 15 of the contact hours required for physical therapists and 10 of the contact hours required for physical therapist assistants shall be in Type 1 face-to-face courses. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:

- a. The Virginia Physical Therapy Association;
- b. The American Physical Therapy Association;
- c. Local, state or federal government agencies;
- d. Regionally accredited colleges and universities;
- e. Health care organizations accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO);
- f. The American Medical Association - Category I Continuing Medical Education course; and
- g. The National Athletic Trainers Association.

2. No more than 15 of the contact hours required for physical therapists and 20 of the contact hours required for physical therapist assistants may be Type 2 activities or courses, which may or may not be offered by an approved organization but which shall be related to the clinical practice of physical therapy. Type 2 activities may include but not be limited to consultation with colleagues, independent study, and research or writing on subjects related to practice.

3. Documentation of specialty certification by the American Physical Therapy Association may be provided



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as evidence of completion of continuing competency requirements for the biennium in which initial certification or recertification occurs.

4. Documentation of graduation from a transitional doctor of physical therapy program may be provided as evidence of completion of continuing competency requirements for the biennium in which the physical therapist was awarded the degree.

C. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure by examination in Virginia.

D. The licensee shall retain his records on the completed form with all supporting documentation for a period of four years following the renewal of an active license.

E. The licensees selected in a random audit conducted by the board shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

G. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

H. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

I. Physical therapists holding certification to provide direct access without a referral shall include four contact hours as part of the required 30 contact hours of continuing education in courses related to clinical practice in a direct access setting.

## **18VAC112-20-135. Inactive license.**

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required renewal fee of \$70 for a physical therapist and \$35 for a physical therapist assistant, be issued an inactive license. ~~From January 1, 2006, through December 31, 2006, the inactive renewal fee shall be \$30 for a physical therapist and \$15 for a physical therapist assistant.~~

1. The holder of an inactive license shall not be required to meet active practice requirements.
2. An inactive licensee shall not be entitled to perform any act requiring a license to practice physical therapy in Virginia.

B. A physical therapist or physical therapist assistant who holds an inactive license may reactivate his license by:

1. Paying the difference between the renewal fee for an inactive license and that of an active license for the biennium in which the license is being reactivated; and
2. Providing proof of:
  - a. Active practice hours in another jurisdiction equal to those required for renewal of an active license in Virginia for the period in which the license has been inactive. If the inactive licensee does not meet the requirement for active practice, the license may be reactivated by ~~meeting the~~ completing 480 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140; and
  - b. Completion of the number of continuing competency hours required for the period in which the license has been inactive, not to exceed four years.

## **18VAC112-20-136. Reinstatement requirements.**

A. A physical therapist or physical therapist assistant whose Virginia license is lapsed for two years or less may reinstate his license by payment of the renewal and late fees as set forth in 18VAC112-20-150 and completion of continued competency requirements as set forth in 18VAC112-20-131.

B. A physical therapist or physical therapist assistant whose Virginia license is lapsed for more than two years and who is seeking reinstatement shall:

1. Practice physical therapy in another jurisdiction for at least 320 hours within the four years immediately preceding applying for reinstatement or successfully complete 480 hours ~~as an inactive practice trainee~~ as specified in 18VAC112-20-140; and
2. Complete the number of continuing competency hours required for the period in which the license has been lapsed, not to exceed four years.

## **18VAC112-20-140. Traineeship required requirements.**

The ~~480 hours of~~ traineeship [ : (i) ] shall be in a facility that [ (†) ] serves as a clinical education facility for students enrolled in an accredited program educating physical therapists in Virginia, (ii) is approved by the board, and (iii) is under the direction and supervision of a licensed physical therapist.

1. The physical therapist supervising the inactive practice trainee shall submit a report to the board at the end of the 480 required number of hours on forms supplied by the board.
2. If the traineeship is not successfully completed at the end of the 480 required hours, as determined by the supervising physical therapist, the president of the board or his designee shall determine if a new traineeship shall commence. If the president of the board determines that a

new traineeship shall not commence, then the application for licensure shall be denied.

3. The second traineeship may be served under a different supervising physical therapist and may be served in a different organization than the initial traineeship. If the second traineeship is not successfully completed, as determined by the supervising physical therapist, then the application for licensure shall be denied.

## **18VAC112-20-150. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Licensure by examination.

1. The application fee shall be \$140 for a physical therapist and \$100 for a physical therapist assistant.

2. The fees for taking all required examinations shall be paid directly to the examination services.

C. Licensure by endorsement. The fee for licensure by endorsement shall be \$140 for a physical therapist and \$100 for a physical therapist assistant.

D. Licensure renewal and reinstatement.

1. The fee for active license renewal for a physical therapist shall be \$135 and for a physical therapist assistant shall be \$70 and shall be due by December 31 in each even-numbered year. ~~From January 1, 2006, through December 31, 2006, the fee for active license renewal fee shall be \$60 for a physical therapist and \$30 for a physical therapist assistant.~~

2. A fee of \$25 for a physical therapist assistant and \$50 for a physical therapist for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.

3. The fee for reinstatement of a license that has expired for two or more years shall be \$180 for a physical therapist and \$120 for a physical therapist assistant and shall be submitted with an application for licensure reinstatement.

E. Other fees.

1. The fee for an application for reinstatement of a license that has been revoked shall be \$1,000; the fee for an application for reinstatement of a license that has been suspended shall be \$500.

2. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.

3. The fee for a returned check shall be \$35.

4. The fee for a letter of good standing/verification to another jurisdiction shall be \$10.

F. Direct access certification fees.

1. The application fee shall be \$75 for a physical therapist to obtain certification to provide services without a referral.

2. The fee for renewal on a direct access certification shall be \$35 and shall be due by December 31 in each even-numbered year.

3. A fee of \$15 for processing a late renewal of certification within one renewal cycle shall be paid in addition to the renewal fee.

## Part IV Standards of Practice

### **18VAC112-20-160. Requirements for patient records.**

A. Practitioners shall comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records.

B. Practitioners shall provide patient records to another practitioner or to the patient or his personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage and keep timely, accurate, legible and complete patient records.

D. Practitioners who are employed by a health care institution, school system or other entity, in which the individual practitioner does not own or maintain his own records, shall maintain patient records in accordance with the policies and procedures of the employing entity.

E. Practitioners who are self-employed or employed by an entity in which the individual practitioner does own and is responsible for patient records shall:

1. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

a. Records of a minor child shall be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;

b. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or

c. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

2. From (six months from the effective date of the regulation), post information or in some manner inform all patients concerning the time frame for record retention and destruction. Patient records shall only be destroyed in a

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manner that protects patient confidentiality, such as by incineration or shredding.

F. When a practitioner is closing, selling or relocating his practice, he shall meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the patient's choice or provided to the patient.

## **18VAC112-20-170. Confidentiality and practitioner-patient communication.**

A. A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

### B. Communication with patients.

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately present information to a patient or his legally authorized representative in understandable terms and encourage participation in decisions regarding the patient's care.

2. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a treatment or procedure provided or directed by the practitioner in the treatment of any disease or condition.

3. Before any invasive procedure is performed, informed consent shall be obtained from the patient and documented in accordance with the policies of the health care entity. Practitioners shall inform patients of the risks, benefits, and alternatives of the recommended invasive procedure that a reasonably prudent practitioner in similar practice in Virginia would tell a patient. In the instance of a minor or a patient who is incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.

4. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as subjects in human research with the exception of retrospective chart reviews.

### C. Termination of the practitioner/patient relationship.

1. The practitioner or the patient may terminate the relationship. In either case, the practitioner shall make the patient record available, except in situations where denial of access is allowed by law.

2. A practitioner shall not terminate the relationship or make his services unavailable without documented notice

to the patient that allows for a reasonable time to obtain the services of another practitioner.

## **18VAC112-20-180. Practitioner responsibility.**

### A. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent;

2. Knowingly allow persons under his supervision to jeopardize patient safety or provide patient care outside of such person's scope of practice or area of responsibility. Practitioners shall delegate patient care only to persons who are properly trained and supervised;

3. Engage in an egregious pattern of disruptive behavior or interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; or

4. Exploit the practitioner/patient relationship for personal gain.

B. A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility or institution as defined in § 37.2-100 of the Code of Virginia, or hospital as defined in § 32.1-123 of the Code of Virginia.

Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by [ Title ] 42 [ 2 USC ] § 1320a-7b(b) [ of the United States Code, as amended, ] or any regulations promulgated thereto.

C. A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.

D. A practitioner shall report any disciplinary action taken by a physical therapy regulatory board in another jurisdiction within 30 days of final action.

## **18VAC112-20-190. Sexual contact.**

A. For purposes of § 54.1-3483 (10) of the Code of Virginia and this section, sexual contact includes, but is not limited to, sexual behavior or verbal or physical behavior that:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the patient, or both; or

2. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it.

### B. Sexual contact with a patient.

1. The determination of when a person is a patient for purposes of § 54.1-3483 (10) of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a patient until the patient-practitioner relationship is terminated.

2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient does not change the nature of the conduct nor negate the statutory prohibition.

C. Sexual contact between a practitioner and a former patient. Sexual contact between a practitioner and a former patient after termination of the practitioner-patient relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care. For purposes of this section, key third party of a patient shall mean spouse or partner, parent or child, guardian, or legal representative of the patient.

E. Sexual contact between a supervisor and a trainee shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care.

### **18VAC112-20-200. Advertising ethics.**

A. Any statement specifying a fee, whether standard, discounted or free, for professional services that does not include the cost of all related procedures, services and products which, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment that is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bona fide

emergency. This provision may not be waived by agreement of the patient and the practitioner.

C. Advertisements of discounts shall disclose the full fee that has been discounted. The practitioner shall maintain documented evidence to substantiate the discounted fees and shall make such information available to a consumer upon request.

D. A licensee shall not use the term "board certified" or any similar words or phrase calculated to convey the same meaning in any advertising for his practice unless he holds certification in a clinical specialty issued by the American Board of Physical Therapy Specialties.

E. A licensee of the board shall not advertise information that is false, misleading, or deceptive. For an advertisement for a single practitioner, it shall be presumed that the practitioner is responsible and accountable for the validity and truthfulness of its content. For an advertisement for a practice in which there is more than one practitioner, the name of the practitioner or practitioners responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years.

F. Documentation, scientific and otherwise, supporting claims made in an advertisement shall be maintained and available for the board's review for at least two years.

VA.R. Doc. No. R07-269; Filed August 10, 2009, 9:58 a.m.

## **BOARD OF COUNSELING**

### **Fast-Track Regulation**

**Title of Regulation: 18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling (amending 18VAC115-30-10, 18VAC115-30-30, 18VAC115-30-40, 18VAC115-30-45, 18VAC115-30-50, 18VAC115-30-60, 18VAC115-30-61, 18VAC115-30-62, 18VAC115-30-90, 18VAC115-30-120, 18VAC115-30-150).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-3505 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 September 30, 2009.

**Effective Date:** October 15, 2009.

**Agency Contact:** Evelyn B. Brown, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4488, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

**Basis:** Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of

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the Code of Virginia. Section 54.1-2400 provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system.

Specific regulatory authority for the powers and duties of the Board of Counseling is found in § 54.1-3505.

**Purpose:** The purpose of the proposed action is to clarify requirements so applicants and certificate holders are better able to comply with regulations. Other changes are intended to improve the competency of those certified by the board to counsel individuals with substance abuse problems. For example, more specificity about evidence of continued ability is necessary for an applicant for reinstatement to be assured that the counselor or assistant is minimally competent and safe to return to practice. These and other changes are intended to assist the board in certifying practitioners who can safely and effectively counsel persons with substance abuse issues.

**Rationale for Using Fast-Track Process:** The proposed action is the result of a periodic review of regulations for which there was no comment received and no substantive changes recommended. Since the amendments are primarily intended to add specificity to regulations that have been confusing, the board does not expect there to be any controversy with the proposed action.

**Substance:** The following changes are proposed:

An "individualized program" has been deleted to allow a Person to complete the 400 hours in seminars and workshops offered by the same providers that are approved for continuing education in regulations for licensed substance abuse treatment practitioners. The amendments will clarify the regulations and the means by which a person can obtain the required number of hours. They will also ensure some professional oversight of seminars and workshops used to complete educational requirements.

The requirement for 100 hours of supervision to be face-to-face has been replaced by "individual" supervision to allow more flexibility in obtaining supervision. Amendments also specify a minimum and maximum number of hours per week, so there is some consistency in supervision throughout the supervised experience.

The requirement to provide evidence of current competency to practice in order to reinstate certification has been amended to specify that the evidence must consist of 20 hours of substance abuse education obtained through seminars and workshops or by coursework at an educational institution.

**Issues:** The primary advantage to the public is the continued assurance that those who are board certified are minimally competent to provide services. There are no disadvantages.

The primary advantage to the agency is clarification and specificity for several rules that have been confusing or ill-defined.

There are no other pertinent matters of interest.

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

Summary of the Proposed Amendments to Regulation. The Board of Counseling (Board) proposes to amend the Regulations Governing the Certification of Substance Abuse Counselors by: 1) removing obsolete terms, 2) adding clarifying language, 3) listing the board-approved organizations for seminars and workshops, 4) repealing the requirement that supervisors submit official transcripts of a high school diploma or general education development certificate, 5) replacing the "face to face" supervision requirement with a requirement for "individual" supervision, 6) amending the experience requirement from "an average of two hours" to "a minimum of one hour and a maximum of four hours per week," and 7) specifying that reinstatement requires that the applicant submit evidence that a minimum of 20 hours of substance abuse education has been obtained.

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated Economic Impact. Both the proposed and current regulations require that applicants for certification as a substance abuse counselor or substance abuse counseling assistant complete respectively 400 clock hours or 300 clock hours of substance abuse education. Under the current regulations applicants may obtain the education from an accredited university or college or via seminars and workshops to be approved by the Board at the time of application. The Board proposes to list the approved organizations from which seminars and workshops must either be taken from or approved by to qualify for board-approved education. According to the Department of Health Professions (Department), this is the same list that is currently used in practice by the Board. Thus, this proposed amendment will be beneficial for applicants in that they will not mistakenly waste their time in seminars and workshops that will not be approved by the Board.

The current regulations require that supervisors submit official transcripts of a high school diploma or general education development certificate. Since supervisors must also hold a license or certification issued by the Board, there is little benefit garnered from requiring that a high school diploma or general education development certificate be sent. The Board proposes to no longer require that transcripts be sent. Since obtaining and sending official transcripts involves time costs and postage, this proposal will create a net benefit by reducing cost without affecting the competence of approved supervisors in practice.

Both the proposed and current regulations require 100 hours of supervised experience and that no more than half of those

hours may be under group supervision. The current regulations require that there be an average of two hours of face-to-face supervision per week. The Board proposes two changes: 1) "an average of two hours" is converted to "a minimum of one hour and a maximum of four hours," and 2) "face-to-face" is amended to "individual." According to the Department, the first change is proposed "so there is some consistency in supervision throughout the supervised experience." There may be a small cost associated with this change in that it reduces flexibility of schedules, but the Board believes the benefit of consistent supervision over time exceeds that cost. The second change is proposed to allow for the use of modern technology to enable one-to-one supervision with its accompanying benefits without the associated costs of always being physically present in the same room.

The current regulations state that "A person who fails to renew a certificate after one year or more shall apply for reinstatement, pay the reinstatement fee for a lapsed license and submit evidence regarding the continued ability to perform the functions within the scope of practice of the license." The Board proposes to specify that the evidence be a minimum of 20 hours of substance abuse education that is consistent with the course content required for initial certification. According to the Department, this is consistent with what the Board currently requires in practice. Placing this language in regulation will be beneficial in that it will reduce confusion and reduce the likelihood of inconsistency of treatment of different individuals with similar circumstances.

**Businesses and Entities Affected.** The proposed amendments affect applicants for substance abuse counselor certification and substance abuse counseling assistant certification, and potentially the current 1597 certified substance abuse counselors and 61 certified substance abuse counseling assistants.<sup>1</sup>

**Localities Particularly Affected.** The proposed amendments do not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposed amendments will not significantly affect the quantity of jobs.

**Effects on the Use and Value of Private Property.** Private health systems which employ certified substance abuse counselors and certified substance abuse counseling assistants may gain some flexibility in how they assign staff due to the proposal to amend "face-to-face" supervision to "individual" supervision. On the other hand, the proposal to change the requirement for an average of two hours of face-to-face supervision per week to a minimum of one hour and a maximum of four hours may reduce some flexibility in how they assign staff. Neither change should significantly affect the value of the private health systems.

**Small Businesses: Costs and Other Effects.** The proposed amendments are unlikely to significantly affect small businesses. Most or all certified substance abuse counselors and certified substance abuse counseling assistants work for public agencies or large health systems.

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

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

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

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<sup>1</sup> Data source: Department of Health Professions

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Counseling concurs with the economic impact analysis of the Department of Planning and Budget for 18VAC115-30, Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling.

Summary:

*The board has amended regulations for substance abuse counselors and assistants to update and clarify regulations that are not clearly understood or specific, to allow more flexibility in acquiring supervised experience required for certification, and to specify the board-approved list of organizations that may offer educational opportunities.*

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## Part I General Provisions

### 18VAC115-30-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Board"

"Certified substance abuse counselor"

"Certified substance abuse counseling assistant"

"Practice of substance abuse treatment"

"Substance abuse" and "substance dependence"

"Substance abuse treatment"

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

"Applicant" means an individual who has submitted a completed application with documentation and the appropriate fees to be examined for certification as a substance abuse counselor or substance abuse counseling assistant.

~~"Appropriately credentialed authority" means an entity licensed by an agency of the Commonwealth to render the services of substance abuse counselors or substance abuse counseling assistants.~~

"Candidate" means a person who has been approved to take the examinations for certification as a substance abuse counselor or substance abuse counseling assistant.

"Clinical supervision" means the ongoing process performed by a clinical supervisor who monitors the performance of the person supervised and provides regular, documented face-to-face consultation, guidance and education with respect to the clinical skills and competencies of the person supervised.

"Clinical supervisor" means one who provides case-related supervision, consultation, education and guidance for the applicant. The supervisor must be credentialed as defined in 18VAC115-30-60 C.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Didactic" means teaching-learning methods ~~which~~ that impart facts and information, usually in the form of one-way communication (includes directed readings and lectures).

"Endorsement" means the waiver of the examination requirement for certification as a substance abuse counselor for persons currently certified or licensed in another jurisdiction.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"NAADAC" means the National Association of Alcoholism and Drug Abuse Counselors.

"Substance abuse counseling" means applying a counseling process, treatment strategies and rehabilitative services to help an individual to:

1. Understand his substance use, abuse or dependency; and
2. Change his drug-taking behavior so that it does not interfere with effective physical, psychological, social or vocational functioning.

### 18VAC115-30-30. Fees required by the board.

A. The board has established the following fees applicable to the certification of substance abuse counselors and substance abuse counseling assistants:

Substance abuse counselor annual certification renewal	\$55
Substance abuse counseling assistant annual certification renewal	\$40
Substance abuse counselor initial certification by examination: Application processing and initial certification	\$90
Substance abuse counseling assistant initial certification by examination: Application processing and initial certification	\$90
Initial certification by endorsement of substance abuse counselors: Application processing and initial certification	\$90
Registration of supervision	\$50
Add or change supervisor	\$25
Duplicate certificate	\$5
Late renewal	\$20
Reinstatement of a lapsed certificate	\$100
Replacement of or additional wall certificate	\$15
Returned check	\$35
Reinstatement following revocation or suspension	\$500
<del>One time fee reduction for renewal of certification as a substance abuse counselor due on June 30, 2007</del>	<del>\$27</del>
<del>One time fee reduction for renewal of certification as a substance abuse counseling assistant due on June 30, 2007</del>	<del>\$20</del>

B. All fees are nonrefundable.

Part II  
Requirements for Certification

**18VAC115-30-40. Prerequisites for certification by examination for substance abuse counselors.**

A. A candidate for certification as a substance abuse counselor shall meet all the requirements of this section, ~~including passing and shall pass~~ the examination prescribed in 18VAC115-30-90.

B. Every ~~prospective~~ applicant for examination for certification by the board shall:

1. Meet the educational and experience requirements prescribed in 18VAC115-30-50 and 18VAC115-30-60;
2. Submit the following to the board or its contracting agent within the time frame established by the board or that agent:
  - a. A completed application form;
  - b. Official transcript documenting attainment of a bachelor's degree;
  - c. Official transcripts or certificates verifying completion of the didactic training requirement set forth in subsection B of 18VAC115-30-50;
  - d. Verification of supervisor's education and experience as required under 18VAC115-30-60;
  - e. Verification of supervision forms documenting fulfillment of the experience requirements of 18VAC115-30-60;
  - f. Documentation of any other professional license or certificate ever held in another jurisdiction; and
  - g. The application processing and initial certification fee.

**18VAC115-30-45. Prerequisites for certification by endorsement for substance abuse counselors.**

Every applicant for certification by endorsement shall submit in one package:

1. A completed application;
2. The application processing fee;
3. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement, the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis. The board will also determine whether any or all other professional licenses or certificates held in another jurisdiction are substantially equivalent to those sought in Virginia;

4. Affidavit of having read and understood the regulations and laws governing the practice of substance abuse counseling in Virginia; and

5. Further documentation of one of the following:

- a. Licensure or certification as a substance abuse counselor in another jurisdiction in good standing obtained by standards substantially equivalent to the education and experience requirements set forth in this chapter as verified by a certified copy of the original application submitted directly from the out-of-state licensing agency, or a copy of the regulations in effect at the time of initial licensure or certification and verification of a passing score on a licensure examination in the jurisdiction in which licensure or certification was obtained, and ~~which that~~ is deemed substantially equivalent by the board; or
- b. Verification of a current certification in good standing issued by NAADAC or other board-recognized national certification in substance abuse counseling in good standing obtained by educational and experience standards substantially equivalent to those set forth in this chapter.

**18VAC115-30-50. Educational requirements for substance abuse counselors.**

A. An applicant for examination for certification as a substance abuse counselor shall:

1. Have a bachelor's degree; and
2. Have completed 400 clock hours of substance abuse education from one of the following programs:
  - a. An accredited university or college; or
  - ~~b. An integrated program acceptable to the board; or~~
  - ~~c. An individualized program of seminars~~ b. Seminars and workshops to be approved by the board at the time of application that meet the requirements of subsection B of this section and are offered or approved by one of the following:

- (1) The American Association of Marriage and Family Counselors and its state affiliates.
- (2) The American Association of Marriage and Family Therapists and its state affiliates.
- (3) The American Association of State Counseling Boards.
- (4) The American Counseling Association and its state and local affiliates.
- (5) The American Psychological Association and its state affiliates.



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(6) The Commission on Rehabilitation Counselor Certification.

(7) NAADAC, The Association for Addiction Professionals and its state and local affiliates.

(8) National Association of Social Workers.

(9) National Board for Certified Counselors.

(10) A national behavioral health organization or certification body.

(11) Individuals or organizations that have been approved as continuing competency sponsors by the American Association of State Counseling Boards or a counseling board in another state.

## B. Substance abuse education.

1. The education will include 220 hours spent in receiving didactic training in substance abuse counseling. Each applicant shall have received a minimum of 10 clock hours in each of the following eight areas:

- a. Understanding the dynamics of human behavior;
- b. Signs and symptoms of substance abuse;
- c. Treatment approaches, ~~group dynamics and other adjunctive treatment and recovery support;~~
- d. Continuum of care and case management skills;
- e. Recovery process and relapse prevention methods;
- f. Ethics;
- g. Professional identity in the provision of substance abuse services; and
- h. Crisis intervention.

In addition, each applicant shall have at least 20 hours in each of the following two areas:

- (i) Substance abuse counseling treatment planning and substance abuse research; and
- (ii) Group counseling.

2. The education shall also consist of 180 hours of experience performing the following tasks with substance abuse clients:

- a. Screening clients to determine eligibility and appropriateness for admission to a particular program;
- b. Intake of clients by performing the administrative and initial assessment tasks necessary for admission to a program;
- c. Orientation of new clients to program's rules, goals, procedures, services, costs and the rights of the client;

d. Assessment of client's strengths, weaknesses, problems, and needs for the development of a treatment plan;

e. Treatment planning with the client to identify and rank problems to be addressed, establish goals, and agree on treatment processes;

f. Counseling the client utilizing specialized skills in both individual and group approaches to achieve treatment goals and objectives;

g. Case management activities ~~which that~~ bring services, agencies, people and resources together in a planned framework of action to achieve established goals;

h. Crisis intervention responses to clients' needs during acute mental, emotional or physical distress;

i. Education of clients by providing information about drug abuse and available services and resources;

j. Referral of clients in order to meet identified needs unable to be met by the counselor and assisting the client in effectively utilizing those resources;

k. Reporting and charting information about client's assessment, treatment plan, progress, discharge summaries and other client-related data; and

l. Consultation with other professionals to assure comprehensive quality care for the client.

Each of these tasks shall be performed for at least eight hours under supervision and shall be verified as a part of the application by the supervisor.

C. Groups and classes attended as a part of a therapy or treatment program will not be accepted as any part of the educational experience.

## **18VAC115-30-60. Experience requirements for substance abuse counselors.**

A. Registration. Supervision obtained without prior board approval will not be accepted if it does not meet the requirements set forth in subsections B and C of this section. Individuals who wish to register supervision for board approval prior to obtaining the supervised experience shall submit in one package:

1. A supervisory contract;
2. Verification of the supervisor's education and experience as required under subsection C of this section; and
- ~~3. Official transcripts documenting completion of a high school diploma or general education development certificate; and~~
4. ~~3.~~ The registration fee.

B. Experience requirements.

1. An applicant for certification as a substance abuse counselor shall have had 2,000 hours of supervised experience in the delivery of clinical substance abuse counseling services.

2. The supervised experience shall include ~~an average of two hours~~ a minimum of one hour and a maximum of four hours per week of ~~face-to-face consultation~~ supervision between the supervisor and the applicant to total 100 hours within the required experience. No more than half of these hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of ~~face-to-face~~ individual supervision.

3. Applicants must document successful completion of their supervised experience on the Verification of Supervision Form at the time of application. ~~Supervised experience obtained prior to January 19, 2000, may be accepted toward certification if this supervised experience met the board's requirements that were in effect at the time the supervision was rendered.~~

C. ~~Supervisory requirements~~ Supervisor qualifications. ~~4. A~~ board-approved clinical supervisor shall be:

~~a. 1. A licensed substance abuse treatment practitioner;~~

~~Be a~~ 2. A licensed professional counselor, licensed clinical psychologist, licensed clinical social worker, licensed marriage and family therapist, medical doctor, or registered nurse, and possess either a board-recognized national certification in substance abuse counseling obtained by standards substantially equivalent to those set forth in this chapter, or a minimum of one year experience in substance abuse counseling and at least 100 hours of didactic training covering the areas outlined in 18VAC115-30-50 B 1 a through h; or

~~b. Be a licensed substance abuse treatment practitioner; or~~

~~c. Be a~~ 3. A substance abuse counselor certified by the Virginia Board of Counseling who has:

(1) a. Board-recognized national certification in substance abuse counseling obtained by standards substantially equivalent to those set forth in this chapter; or

(2) b. Two years experience as a Virginia board-certified substance abuse counselor.

D. Supervisory responsibilities.

~~2.~~ 1. Supervisors shall assume responsibility for the professional activities of the prospective applicants under their supervision.

~~3.~~ 2. Supervisors shall not provide supervision for activities for which prospective applicants have not had appropriate education.

~~4.~~ 3. Supervisors shall provide supervision only for those substance abuse counseling services ~~which~~ that they are qualified to render.

~~5.~~ 4. At the time of formal application for certification, the board-approved supervisor shall document the applicant's total hours of supervision, length of work experience, competence in substance abuse counseling and any needs for additional supervision or training.

~~6.~~ 5. Supervision by any individual whose relationship to the supervisee compromises the objectivity of the supervisor is prohibited.

~~7. The applicant shall keep the board's contracting agent informed of his current supervisor's license or certificate number, business address, and phone number. The board's contracting agent shall be informed within 30 days of any changes in the applicant's supervision.~~

**18VAC115-30-61. Prerequisites for certification by examination for substance abuse counseling assistant.**

A. A candidate for certification as a substance abuse counseling assistant shall meet all the requirements of this section, including passing the examination prescribed in 18VAC115-30-90.

B. Every ~~prospective~~ applicant for examination for certification by the board shall:

1. Meet the educational requirements prescribed in 18VAC115-30-62; and

2. Submit the following to the board ~~or its contracting agent~~ within the time frame established by the board ~~or that agent~~:

a. A completed application form;

b. Official transcript documenting attainment of a high school diploma or general education development (GED) certificate; and

c. The application processing and initial certification fee.

**18VAC115-30-62. Educational requirements for substance abuse counseling assistants.**

A. An applicant for certification as a substance abuse counseling assistant shall:

1. Have an official high school diploma or general education development (GED) certificate; and

2. Have completed 300 clock hours of substance abuse education from one of the following programs:

a. An accredited university or college; or

~~b. An integrated program approved by the board at the time of application; or~~

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~~e. An individualized program of seminars~~ b. Seminars and workshops approved by the board at the time of application that meet the educational requirements specified in subsection B of this section and are offered or approved by one of the following:

(1) The American Association of Marriage and Family Counselors and its state affiliates.

(2) The American Association of Marriage and Family Therapists and its state affiliates.

(3) The American Association of State Counseling Boards.

(4) The American Counseling Association and its state and local affiliates.

(5) The American Psychological Association and its state affiliates.

(6) The Commission on Rehabilitation Counselor Certification.

(7) NAADAC, The Association for Addiction Professionals and its state and local affiliates.

(8) National Association of Social Workers.

(9) National Board for Certified Counselors.

(10) A national behavioral health organization or certification body.

(11) Individuals or organizations that have been approved as continuing competency sponsors by the American Association of State Counseling Boards or a counseling board in another state.

## B. Substance abuse education.

1. The education will include 120 hours spent in receiving didactic training in substance abuse counseling. Each applicant shall have received a minimum of 10 clock hours in each of the following eight areas:

- a. Understanding the dynamics of human behavior;
- b. Signs and symptoms of substance abuse;
- c. Treatment approaches, ~~group dynamics and other adjunctive treatment and recovery support;~~
- d. Case management skills and continuum of care;
- e. Recovery process and relapse prevention methods;
- f. Ethics;
- g. Professional identity in the provision of substance abuse services; and
- h. Crisis intervention.

2. The education shall include 180 hours of experience performing the following tasks with substance abuse clients while under supervision:

- a. Screening clients and gathering information used in making the determination for the need for additional professional assistance;
- b. Intake of clients by performing the administrative tasks necessary for admission to a program;
- c. Orientation of new clients to program's rules, goals, procedures, services, costs and the rights of the client;
- d. Assisting the client in identifying and ranking problems to be addressed, establish goals, and agree on treatment processes;
- e. Implementation of a substance abuse treatment plan as directed by the supervisor;
- f. Implementation of case management activities that bring services, agencies, people and resources together in a planned framework of action to achieve established goals;
- g. Assistance in identifying appropriate crisis intervention responses to clients' needs during acute mental, emotional or physical distress;
- h. Education of clients by providing information about drug abuse and available services and resources;
- i. Facilitating the client's utilization of available support systems and community resources to meet needs identified in clinical valuation or treatment planning;
- j. Reporting and charting information about client's treatment, progress, and other client-related data; and
- k. Consultation with other professionals to assure comprehensive quality care for the client.

Each of these tasks shall be performed for at least eight hours under supervision and shall be verified as a part of the application by the supervisor.

C. Groups and classes attended as a part of a therapy or treatment program shall not be accepted as any part of the educational experience.

## Part III Examinations

### **18VAC115-30-90. General examination requirements for substance abuse counselors and substance abuse counseling assistants.**

A. Every applicant for certification as a substance abuse counselor or substance abuse counseling assistant by examination shall pass a written examination approved by the board. The board shall determine the passing score on the examination.

B. Every applicant for certification by endorsement shall have passed an examination deemed by the board to be substantially equivalent to the Virginia examination.

~~C. The contracting agent shall notify all applicants in writing of the time and place of the examination for which they have been approved to sit.~~

~~D. The contracting agent will notify all applicants in writing of their success or failure on any examination.~~

**18VAC115-30-120. Reinstatement.**

A. A person whose certificate has expired may renew it within one year after its expiration date by paying the late renewal fee prescribed in 18VAC115-30-30 and the certification fee prescribed for the year the certificate was not renewed.

B. A person who fails to renew a certificate after one year or more shall apply for reinstatement, pay the reinstatement fee for a lapsed ~~license certificate~~ and submit evidence ~~regarding~~ of a minimum of 20 hours of substance abuse education that is consistent with course content specified in subsection B of 18VAC15-30-50 for substance abuse counselors and in 18VAC15-30-62 for substance abuse counseling assistants to demonstrate the continued ability to perform the functions within the scope of practice of the ~~license certificate~~.

**18VAC115-30-150. Grounds for revocation, suspension, restriction or denial of certificate; petition for rehearing.**

~~A.~~ In accordance with § 54.1-2400(7) of the Code of Virginia, the board may revoke, suspend, restrict or decline to issue or renew a certificate based upon the following conduct:

1. Conviction of a felony or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of substance abuse counseling, or any provision of this chapter;
2. Procuring a certificate by fraud or misrepresentation;
3. Conducting one's practice in such a manner so as to make it a danger to the health and welfare of one's clients or to the public; or if one is unable to practice substance abuse counseling with reasonable skill and safety to clients by reason of illness, abusive use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;
4. Negligence in professional conduct or nonconformance with the standards of practice outlined in 18VAC115-30-140; or
5. Performance of functions outside the board-certified area of competency.

~~B. Petition for rehearing. A petition may be made to the board for a rehearing upon good cause shown or as a result of~~

~~substantial new evidence having been obtained which would alter the determination reached in subsection A of this section.~~

VA.R. Doc. No. R09-1802; Filed August 10, 2009, 9:57 a.m.

**BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLAND PROFESSIONALS**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Board for Professional Soil Scientists and Wetland Professionals is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board for Professional Soil Scientists and Wetland Professionals will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC145-20. Professional Soil Scientists Regulations (amending 18VAC145-20-111).**

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

Effective Date: October 1, 2009.

Agency Contact: Kathleen R. Nobsch, Executive Director, Board for Professional Soil Scientists and Wetland Professionals, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email soilscientist@dpor.virginia.gov.

Summary:

*The amendment removes experience as a waiver to taking the examination for certification as a Professional Soil Scientist.*

**18VAC145-20-111. Waiver from examination through reciprocity ~~or experience.~~**

An applicant qualified to take the examination may be granted a Virginia certificate without written examination, provided that: ~~1. The~~ the applicant holds an unexpired professional soil scientist certificate or equivalent issued on the basis of equivalent requirements for certification in Virginia, by a regulatory body of another state, territory or possession of the United States and is not the subject of any disciplinary proceeding before such regulatory body ~~which~~ that could result in the suspension or revocation of his certificate, and such other regulatory body recognizes the certificates issued by this board, ~~or.~~

~~2. The applicant can verify a record of at least 10 years of experience as set forth in 18VAC145-20-90 in soil evaluation that demonstrates to the board that the applicant is competent to practice as a professional soil scientist.~~

VA.R. Doc. No. R09-2089; Filed August 11, 2009, 1:59 p.m.

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## TITLE 22. SOCIAL SERVICES

### BOARDS OF EDUCATION; JUVENILE JUSTICE; BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES; AND SOCIAL SERVICES

#### Final Regulation

Title of Regulation: **22VAC42-11. Standards for Interdepartmental Regulation of Children's Residential Facilities (repealing 22VAC42-11-10 through 22VAC42-11-1100).**

Statutory Authority: §§ 16.1-309.9, 22.1-321, 22.1-323, 22.1-323.2, 37.2-407, 37.2-408, 63.2-217, 63.2-1701, 63.2-1703, 63.2-1737, 63.2-203, 66-10, and 66-24 of the Code of Virginia.

Effective Date: October 1, 2009.

Agency Contact: L. Richard Martin, Jr., Director, Department of Social Services, Office of Legislative and Regulatory Affairs, 7 North Eighth Street, Room 5214, Richmond, VA 23219, telephone (804) 726-7902, FAX (804) 726-7006, TTY (800) 828-1120, or email richard.martin@dss.virginia.gov.

#### Summary:

*Pursuant to Chapter 873 of the 2008 Acts of Assembly, this action eliminates the interdepartmental regulation of children's residential facilities and group homes. The Departments of Behavioral Health and Developmental Services, Social Services, and Juvenile Justice now regulate and license children's residential facilities and group homes for which they are the primary licensing agency with newly promulgated regulations specific to each agency.*

VA.R. Doc. No. R09-2053; Filed August 7, 2009, 2:23 p.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### DEPARTMENT OF MOTOR VEHICLES

#### Final Regulation

Title of Regulation: **24VAC20-81. Hauling Permit Regulation (adding 24VAC20-81-10 through 24VAC20-81-250).**

Statutory Authority: § 46.2-203 and Article 18 (§ 46.2-1139 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

Effective Date: September 30, 2009.

Agency Contact: Barbara S. Klotz, Legislative Services Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-8171, FAX (804) 367-6631, TTY (800) 272-9268, or email barbara.klotz@dmv.virginia.gov.

#### Summary:

*The Department of Motor Vehicles is responsible for the issuance of oversize and overweight permits for the movement of objects and vehicles that exceed the statutory limits set forth in the Code of Virginia. This is a new regulation that contains the Hauling Permit Manual. The manual establishes the requirements for the issuance of hauling permits and the movement of these objects and vehicles over the highways of the Commonwealth of Virginia.*

*During the 60-day comment period for the proposed regulation, concerns were raised by industry representatives and law-enforcement officials in two key areas: the invalidation of hauling permits and the escort vehicle requirements. Industry representatives expressed concerns regarding the high cost associated with the invalidation of permits while law-enforcement officials emphasized the need to ensure that overdimension loads are moved safely over the highways of Virginia. 24VAC20-81-230 is revised to clarify the invalidation of permits by law enforcement. DMV believes that the revisions to this section will minimize the burden on specialized carriers and riggers in the Commonwealth yet support law-enforcement requirements that overdimension loads be moved as safely as possible through local jurisdictions.*

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

## CHAPTER 81 HAULING PERMIT REGULATION \

### Part I General Provisions

#### 24VAC20-81-10. Definitions.

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

"Automobile and watercraft transporters" means a tractor truck, lowboy, vehicle, or combination, including vehicles or combinations that transport motor vehicles or watercraft on their power unit, designed and used exclusively for the transportation of motor vehicles or watercraft.

"Commissioner" means the Commissioner of the Virginia Department of Motor Vehicles.

"DMV" means the Virginia Department of Motor Vehicles.

"Escort Vehicle Driver Certification" means a document issued by a state that signifies that the holder of the certification has successfully completed the issuing state's requirements to escort overdimensional vehicle configurations.

"Nondivisible load [or vehicle]" means a vehicle configuration exceeding applicable size or weight limits which, if separated into smaller loads, would:

1. Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;
2. Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or
3. Require more than eight man work hours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of man work hours required to dismantle the load.

"Nondivisible load or vehicle" can also be defined as in 23 CFR 658.5 (<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>).

"Off-centered load" means a [transport vehicle's cargo is loaded so that there is no overhang on driver's side of the transport vehicle and overhang on the passenger side load that extends beyond, and is not evenly distributed across the bed of the transport vehicle. Off-centered loads must be loaded so the overhang is to the passenger side of the transport vehicle ].

"Semitrailer" means a vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rest on or is carried by another vehicle.

"Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges that are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or byproduct material as defined by the Federal Atomic Energy Act of 1954.

"Stinger-steered automobile and watercraft transporter" means an automobile or watercraft transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame behind and below the rearmost axle of the power unit.

"Tandem axle" means [ ~~more~~ not less ] than 40 inches but not more than 96 inches between axle centers of two consecutive axles.

"Tractor truck" means a motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

"Trailer" means a vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, including manufactured housing.

"Truck" means a motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds.

"VDOT" means the Virginia Department of Transportation.

"Vehicle configuration" means the height, weight, width and length of a vehicle to include vehicle axle spacing.

## **24VAC20-81-20. General.**

A. The Code of Virginia sets forth limitations of weight, width, height and length of objects and vehicles that may be moved upon state highways and also empowers the Commissioner of the Department of Motor Vehicles to issue oversize or overweight permits for vehicles traveling over Virginia's highways with loads that, when reduced to their smallest dimensions, exceed maximum legal weight or size limits.

B. The intent of establishing statutory limitations is to protect the traveling public from hazard and unnecessary inconvenience, and to preserve the capacity and structural integrity of highways and bridges. Also, it is assumed that the state legislature did not intend for the Virginia Department of Motor Vehicles to allow, by permit, the movement of any and all vehicles or loads over the highways where such movements would exceed statutory limitations (especially where other forms of transportation are available or when loads can be reasonably reduced to meet statutory limits).

C. Permits issued by the Virginia Department of Motor Vehicles have jurisdiction only on those roads maintained by the Virginia Department of Transportation or where an agreement exists between the Virginia Department of Motor Vehicles and a jurisdiction that bears the responsibility of maintaining their own roads. However, the Virginia Department of Motor [ ~~Vehicle's Vehicles'~~ ] hauling permit is valid for travel over city streets provided that the streets are listed within the permit. Applicants must secure approval from local authorities prior to making movements over roads under local [ ~~jurisdiction~~ jurisdiction ] that are not listed on the Virginia Department of Motor [ ~~Vehicle's Vehicles'~~ ] hauling permit.

D. The policy of the Virginia Department of Motor Vehicles is to give primary consideration to the safety, comfort, convenience of the traveling public and to the economic

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interest of the Commonwealth while preserving the integrity of the state's highway system.

## **24VAC20-81-30. Authority; permits.**

A. The Commissioner of the Department of Motor Vehicles or his designee shall issue hauling permits for qualifying vehicles when: an overwidth situation is not created by loading multiple items side-by-side; an overheight situation is not created by stacking multiple items on top of one another; an overlength situation is not created by loading multiple items behind one another; an overweight situation is not created by carrying multiple items; or when statutorily exempted by the Code of Virginia.

B. All applications for hauling permits shall be made to the Department of Motor Vehicles or its designee by:

1. Accessing the hauling permit website online at [www.dmvnow.com](http://www.dmvnow.com);
2. Calling the hauling permit ordering line at (804) 786-2787;
3. Applying through a permit service chosen by the applicant;
4. Applying in person at the DMV Headquarters Office at 2300 W. Broad St., Richmond;
5. Faxing application to the Hauling Permit Section at (804) 367-0063; or
6. Mailing application to: DMV, Hauling Permit Section, P.O. Box [ ~~23602~~ 26302 ], Richmond, VA [ ~~2326~~ 23260 ].

C. Permits may be denied, revoked or declared invalid as stated in 24VAC20-81-230.

### Part II Legal Weight and Size Limits for Virginia

## **24VAC20-81-40. Interstate system and designated highways.**

If the vehicle configuration has been reduced to the smallest dimensions possible and still exceeds any of the following statutory limitations listed below, the applicant may be eligible for a hauling permit.

<u>Single Axle Weight:</u>	<u>20,000 pounds or 650 pounds per inch (width) of tire in contact with the surface of the highway</u>
<u>Tandem Axle Weight:</u>	<u>34,000 pounds</u>
<u>Gross Weight:</u>	<u>See 24VAC20-81-60. Legal weight allowed based on axle spacing</u>
<u>Width:</u>	<u>8 feet 6 inches (excluding mirrors and safety devices)</u>
<u>Height:</u>	<u>13 feet 6 inches</u>

### Length:

Semitrailer - 48 feet

Semitrailer - 53 feet, provided that the semitrailer has a distance of not more than 41 feet between the kingpin of the semitrailer and the rearmost axle or a point midway between the rear tandem axles.

Tractor truck semitrailer combinations with 48 or 53 foot semitrailers - no overall length restrictions.

Twin trailers - 28 1/2 feet each

Single unit vehicle - 40 feet excluding load

Tractor trucks shall not have more than one semitrailer attached.

Trucks shall not have more than one trailer attached.

Three motor vehicles shall be drawn only if coupled together by a saddle mount device.

## **24VAC20-81-50. Primary and secondary systems.**

If the vehicle configuration has been reduced to the smallest dimensions possible and still exceeds any of the following statutory limitations listed below, the applicant may be eligible for a hauling permit.

<u>Single Axle Weight:</u>	<u>20,000 pounds or 650 pounds per inch (width) of tire in contact with the surface of the highway.</u>
<u>Tandem Axle Weight:</u>	<u>34,000 pounds.</u>
<u>Gross Weight:</u>	<u>See 24VAC20-81-60. Legal weight allowed based on axle spacing.</u>
<u>Width:</u>	<u>8 feet 6 inches excluding mirrors. Safety devices shall not exceed 3 inches on each side.</u>
<u>Height:</u>	<u>13 feet 6 inches.</u>
<u>Length:</u>	<u>Single unit - 40 feet excluding load.</u>

Tractor semitrailer combination - 65 feet including load

Combination of a towing vehicle and any manufactured housing - 65 feet including load and coupling.

Semitrailer - 53 feet, provided that the semitrailer has a distance of not more than 41 feet between the kingpin of the semitrailer and the rearmost axle or a point midway between the rear tandem axles. May be prohibited on certain highways where posted.

**24VAC20-81-60. Legal weight allowed based on axle spacing.**

Legal weight in pounds for any group of two or more consecutive axles. A hauling permit is required when a vehicle configuration exceeds the weight limitations

according to axle spacing. "L" is defined as the distance in feet between [ ~~the extremes of~~ ] any group of two or more consecutive axles [ , when measured longitudinally, from the center of the axle to the center of the axle, with any fraction of a foot rounded to the next highest foot as set forth in the following table ]:

<u>L</u>	<u>2 axles</u>	<u>3 axles</u>	<u>4 axles</u>	<u>5 axles</u>	<u>6 axles</u>	<u>7 or more axles</u>
<u>4</u>	<u>34,000</u>					
<u>5</u>	<u>34,000</u>					
<u>6</u>	<u>34,000</u>					
<u>7</u>	<u>34,000</u>					
<u>8</u>	<u>34,000</u>	<u>34,000</u>				
<u>9</u>	<u>39,000</u>	<u>42,500</u>				
<u>10</u>	<u>40,000</u>	<u>43,500</u>				
<u>11</u>		<u>44,000</u>				
<u>12</u>		<u>45,000</u>	<u>50,000</u>			
<u>13</u>		<u>45,000</u>	<u>50,500</u>			
<u>14</u>		<u>46,500</u>	<u>51,500</u>			
<u>15</u>		<u>47,000</u>	<u>52,000</u>			
<u>16</u>		<u>48,000</u>	<u>52,500</u>	<u>58,000</u>		
<u>17</u>		<u>48,500</u>	<u>53,500</u>	<u>58,500</u>		
<u>18</u>		<u>49,500</u>	<u>54,000</u>	<u>59,000</u>		
<u>19</u>		<u>50,000</u>	<u>54,500</u>	<u>60,000</u>		
<u>20</u>		<u>51,000</u>	<u>55,500</u>	<u>60,500</u>	<u>66,000</u>	
<u>21</u>		<u>51,500</u>	<u>56,000</u>	<u>61,000</u>	<u>66,500</u>	
<u>22</u>		<u>52,500</u>	<u>56,500</u>	<u>61,500</u>	<u>67,000</u>	
<u>23</u>		<u>53,000</u>	<u>57,500</u>	<u>62,500</u>	<u>68,000</u>	
<u>24</u>		<u>54,000</u>	<u>58,000</u>	<u>63,000</u>	<u>68,500</u>	<u>74,000</u>
<u>25</u>		<u>54,500</u>	<u>58,500</u>	<u>63,500</u>	<u>69,000</u>	<u>74,500</u>
<u>26</u>		<u>55,500</u>	<u>59,500</u>	<u>64,000</u>	<u>69,500</u>	<u>75,000</u>
<u>27</u>		<u>56,000</u>	<u>60,000</u>	<u>65,000</u>	<u>70,000</u>	<u>75,500</u>
<u>28</u>		<u>57,000</u>	<u>60,500</u>	<u>65,500</u>	<u>71,000</u>	<u>76,500</u>
<u>29</u>		<u>57,500</u>	<u>61,500</u>	<u>66,000</u>	<u>71,500</u>	<u>77,000</u>
<u>30</u>		<u>58,500</u>	<u>62,000</u>	<u>66,500</u>	<u>72,000</u>	<u>77,500</u>
<u>31</u>		<u>59,000</u>	<u>62,500</u>	<u>67,500</u>	<u>72,500</u>	<u>78,000</u>
<u>32</u>		<u>60,000</u>	<u>63,500</u>	<u>68,000</u>	<u>73,000</u>	<u>78,500</u>



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<u>33</u>			<u>64,000</u>	<u>68,500</u>	<u>74,000</u>	<u>79,000</u>
<u>34</u>			<u>64,500</u>	<u>69,000</u>	<u>74,500</u>	<u>80,000</u>
<u>35</u>			<u>65,500</u>	<u>70,000</u>	<u>75,000</u>	
<u>36</u>			<u>66,000</u>	<u>70,500</u>	<u>75,500</u>	
<u>37</u>			<u>66,500</u>	<u>71,000</u>	<u>76,000</u>	
<u>38</u>			<u>67,500</u>	<u>72,000</u>	<u>77,000</u>	
<u>39</u>			<u>68,000</u>	<u>72,500</u>	<u>77,500</u>	
<u>40</u>			<u>68,500</u>	<u>73,000</u>	<u>78,000</u>	
<u>41</u>			<u>69,500</u>	<u>73,500</u>	<u>78,500</u>	
<u>42</u>			<u>70,000</u>	<u>74,000</u>	<u>79,000</u>	
<u>43</u>			<u>70,500</u>	<u>75,000</u>	<u>80,000</u>	
<u>44</u>			<u>71,500</u>	<u>75,500</u>		
<u>45</u>			<u>72,000</u>	<u>76,000</u>		
<u>46</u>			<u>72,500</u>	<u>76,500</u>		
<u>47</u>			<u>73,500</u>	<u>77,500</u>		
<u>48</u>			<u>74,000</u>	<u>78,000</u>		
<u>49</u>			<u>74,500</u>	<u>78,500</u>		
<u>50</u>			<u>75,500</u>	<u>79,000</u>		
<u>51</u>			<u>76,000</u>	<u>80,000</u>		

**24VAC20-81-70. Maximum single axle and tandem axle weight allowed without an engineering review.**

Maximum weight in pounds according to vehicle axle spacings allowed by permit without an engineering review from the Virginia Department of Transportation's Structures and Bridges Division for any single axle or tandem axle group.

Single Axle Weight: 24,000 pounds (or 850 pounds per inch, width of tire measured in contact with the surface of the road).

Tandem Axle Weight: 44,000 pounds.

**24VAC20-81-80. Maximum weight allowed by permit without an engineering review based on axle spacing.**

Maximum weight in pounds according to vehicle axle spacings allowed by permit without an engineering review from the Virginia Department of Transportation's Structures and Bridges Division for any group of two or more consecutive axles.

All vehicle configurations shall be reduced to the smallest dimensions possible and those exceeding the specifications identified in this chart will require an engineering review before a permit can be issued.

"L" is defined as the distance in feet between [ extremes of ] any group of two or more consecutive axles [ , when measured longitudinally, from the center of the axle to the center of the axle, with any fraction of a foot rounded to the next highest foot as set forth in the following table ]:

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<u>L</u>	<u>2 axles</u>	<u>3 axles</u>	<u>4 axles</u>	<u>5 axles</u>	<u>6 axles</u>	<u>7 or more axles</u>
4	44,000					
5	44,000					
6	44,000					
7	44,000					
8	48,000	53,500				
9		54,500				
10		55,000				
11		56,000				
12		56,500	63,000			
13		57,500	63,500			
14		58,000	64,500			
15		59,000	65,000			
16		59,500	65,500	72,500		
17		60,500	66,500	73,000		
18		61,000	67,000	74,000		
19		62,000	67,500	74,500		
20		62,500	68,500	75,000	82,000	
21		63,500	69,000	75,500	82,500	
22		64,000	69,500	76,500	83,000	
23		65,000	70,500	77,000	84,000	
24		65,500	71,000	77,500	84,500	91,500
25		66,500	71,500	78,000	85,000	92,000
26		67,000	72,500	79,000	85,500	92,500
27		68,000	73,000	79,500	86,000	93,000
28		68,500	73,500	80,000	87,000	94,000
29		69,500	74,500	80,500	87,500	94,500
30		70,000	75,000	81,500	88,000	95,000
31		71,000	75,500	82,000	88,500	95,500
32		71,500	76,500	82,500	89,000	96,000
33			77,000	83,000	90,000	97,000
34			77,500	84,000	90,500	97,500
35			78,500	84,500	91,000	98,000
36			79,000	85,000	91,500	98,500
37			79,500	85,500	92,000	99,000

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<u>38</u>			<u>80,500</u>	<u>86,500</u>	<u>93,000</u>	<u>99,500</u>
<u>39</u>			<u>81,000</u>	<u>87,000</u>	<u>93,500</u>	<u>100,500</u>
<u>40</u>			<u>81,500</u>	<u>87,500</u>	<u>94,000</u>	<u>101,000</u>
<u>41</u>			<u>82,500</u>	<u>88,000</u>	<u>94,500</u>	<u>101,500</u>
<u>42</u>			<u>83,000</u>	<u>89,000</u>	<u>95,000</u>	<u>102,000</u>
<u>43</u>			<u>83,500</u>	<u>89,500</u>	<u>96,000</u>	<u>102,500</u>
<u>44</u>			<u>84,500</u>	<u>90,000</u>	<u>96,500</u>	<u>103,000</u>
<u>45</u>			<u>85,000</u>	<u>90,500</u>	<u>97,000</u>	<u>104,000</u>
<u>46</u>			<u>85,500</u>	<u>91,500</u>	<u>97,500</u>	<u>104,500</u>
<u>47</u>			<u>86,500</u>	<u>92,000</u>	<u>98,000</u>	<u>105,000</u>
<u>48</u>			<u>87,000</u>	<u>92,500</u>	<u>99,000</u>	<u>105,500</u>
<u>49</u>			<u>87,500</u>	<u>93,000</u>	<u>99,500</u>	<u>106,000</u>
<u>50</u>			<u>88,500</u>	<u>94,000</u>	<u>100,000</u>	<u>106,500</u>
<u>51</u>			<u>89,000</u>	<u>94,500</u>	<u>100,500</u>	<u>107,500</u>
<u>52</u>			<u>89,500</u>	<u>95,000</u>	<u>101,000</u>	<u>108,000</u>
<u>53</u>			<u>90,500</u>	<u>95,500</u>	<u>102,000</u>	<u>108,500</u>
<u>54</u>			<u>91,000</u>	<u>96,500</u>	<u>102,500</u>	[ <del><u>109,500</u></del> <u>109,000</u> ]
<u>55</u>			<u>91,500</u>	<u>97,000</u>	<u>103,000</u>	<u>109,500</u>
<u>56</u>			<u>92,500</u>	<u>97,500</u>	<u>104,000</u>	<u>110,000</u>
<u>57</u>			<u>93,000</u>	<u>98,000</u>	<u>104,500</u>	<u>111,000</u>
<u>58</u>			<u>94,000</u>	<u>99,000</u>	<u>105,000</u>	<u>111,500</u>
<u>59</u>			<u>94,500</u>	<u>99,500</u>	<u>105,500</u>	<u>112,000</u>
<u>60</u>			<u>95,000</u>	<u>100,000</u>	<u>106,000</u>	<u>112,500</u>
<u>61</u>			<u>96,000</u>	<u>101,000</u>	<u>106,500</u>	<u>113,000</u>
<u>62</u>				<u>101,500</u>	<u>107,000</u>	<u>113,500</u>
<u>63</u>				<u>102,000</u>	<u>108,000</u>	<u>114,500</u>
<u>64</u>				<u>102,500</u>	<u>108,500</u>	<u>115,000</u>

### Part III

#### Description, Requirements and Limitations of Special Permits Available

##### **24VAC20-81-90. Single trip permit.**

Single trip permits are issued to cover one movement between two specific points. Single trip permits are vehicle specific and cannot be transferred between [ ~~vehicle configurations~~ vehicles ]. Most single trip permits are valid for a 13-day period; however the Hauling Permit Section may restrict any single trip permit movement to a lesser period depending on various circumstances such as weather, routes

of travel, construction projects, overall dimensions of the vehicle configuration or other unforeseen circumstances. No refunds or credits will be granted for unused or expired permits.

[ ~~Single trip permits are vehicle specific and cannot be transferred between vehicles.~~ ] Since the permits are vehicle specific, the original permit or a legible copy of the entire permit is required to be carried in the transport vehicle. This permit shall be presented to Department of Motor Vehicles, law enforcement or Department of Transportation officials when requested.

Maximum Size and Weight Limitations for the Single Trip Permit

<u>Height:</u>	<u>15 feet</u>
<u>Width:</u>	<u>15 feet</u>
<u>Length:</u>	<u>[ 400 150 ] feet</u>
<u>Single Axle:</u>	<u>24,000 pounds</u>
<u>Tandem Axle:</u>	<u>44,000 pounds</u>
<u>Tri-Axle:</u>	<u>Maximum weight based on total amount of [ spacings spacing ] between the centers of the first and last axle in the 3 axle group - see 24VAC20-81-80.</u>
<u>Quad Axle:</u>	<u>Maximum weight based on total amount of [ spacings spacing ] between the centers of the first and last axle in the 4 axle group - see 24VAC20-81-80.</u>
<u>Gross Weight:</u>	<u>Maximum weight based on total number of axles in the configuration and total amount of [ spacings spacing ] between the centers of the first and last axles - see 24VAC20-81-80.</u>

**24VAC20-81-100. Superload single trip permit.**

A. Like the single trip permit, superload single trip permits are issued to cover one movement between two specific points. Superload single trip permit requests exceed the maximum weight or size limitations allowed on a single trip permit. Superload single trip permit requests require various levels of research and analysis and should be submitted to the Hauling Permit Section at least 10 working days prior to the anticipated date of movement. All superload single trip permits are issued on a case-by-case basis, and only after an appropriate review or VDOT engineering analysis has determined that the vehicle configuration will not harm or damage bridges and structures on the designated routes of travel. Results of the review or engineering analysis may render the vehicle configuration ineligible for movement.

Superload single trip permits are vehicle specific and cannot be transferred between vehicles. Since superload single trip permits are vehicle specific, the original permit or a legible copy of the entire permit is required to be carried in the transport vehicle. This permit shall be presented to Department of Motor Vehicles, law enforcement or Department of Transportation officials when requested.

In cases where the superload single trip permit request has been denied due to weight, the customer may request that an in-depth engineering analysis be performed on the desired route of travel. VDOT structures and bridges engineers will perform the in-depth engineering analysis. The applicant is responsible for paying all expenses associated with the in-depth engineering analysis. All requests for an in-depth

analysis must be submitted to the Hauling Permit Section in writing. Upon receipt of the letter requesting the in-depth analysis a member of the hauling permit staff will assist the applicant through the remainder of the process.

B. Requirements for superload single trip permits exceeding certain parameters are described in this subsection:

A letter of variance is required on all movements that exceed any of the following parameters: 18 feet in width; 250,000 pounds in weight; 200 feet in length; or 16 feet in height. The shipper or the manufacturer of the oversized or overweight item will submit the information listed below to the Virginia Department of Motor Vehicles: FAX: (804) 367-0063 or mailed to the Virginia Department of Motor Vehicles, Hauling Permit Section, P.O. Box 26302, Richmond, VA 23260. The letter shall list, in detail:

1. Name and description of the item being moved;
2. Overall loaded dimensions for the vehicle configuration to include height, width, length and gross weight;
3. Explanation of why the load cannot be reduced;
4. Explanation of why the load cannot be transported by air, rail or water;
5. Origin and destination specific to Virginia, including mileage and specific intersecting routes (e.g., Route 65 - one mile south of Route 2 in Campbell County);
6. Preferred routes of travel; and
7. Point of contact, someone within the company that can speak to the requested movement in case additional information is needed.

C. In addition to the letter of variance all movements that exceed 18 feet in width or 16 feet in height may be required to submit a detailed travel plan, depending on the time of travel and the routes of travel. The plan should include but is not limited to the following:

1. The plan should address how to facilitate the movement of emergency vehicles responding to emergencies. The plan will also identify locations where the overdimensional configuration will pull over to allow movement of traffic. Traffic shall not be detained for more than 10 minutes if at all possible. The plan will also address layover locations.
2. Letters from property owners or public facilities giving permission to layover on their property until able to proceed in accordance with the permit. Each letter shall include the name, phone number and email address of the primary point of contact. The hauling permit staff will contact the point of contact to confirm the layover privileges on their property prior to DMV issuing the superload single trip permit.
3. Letters from local law-enforcement personnel agreeing to escort the overdimensional configuration through their

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jurisdiction. Each letter shall include the name, phone number and email address of the primary point of contact. The hauling permit staff will contact the point of contact to confirm their escorting role prior to DMV issuing the superload single trip permit.

4. Letters from affected utility, cable and telephone companies, agreeing to accompany the overdimensional configuration to lift overhead wires. Each letter shall include the name, phone number and email address of the primary point of contact. The hauling permit staff will contact the point of contact to confirm their role in the move prior to DMV issuing the hauling permit.

5. Letters from the Department of Transportation agreeing to accompany the overdimensional configuration to lift overhead traffic signals, remove traffic [ signals signal ] arms, or remove guardrails, or remove signs, or remove and or adjust any inventory maintained by their department. Each letter shall include the name, phone number and email address of the primary point of contact. The hauling permit staff will contact the point of contact to confirm their role in the move prior to DMV issuing the hauling permit.

## **24VAC20-81-110. General blanket permit.**

General blanket permits allow frequent movements within a specified time period on designated or unrestricted routes in Virginia. General blanket permits are issued on a case-by-case basis and only after appropriate reviews or analysis have been completed to ensure the vehicle configuration will not harm or damage bridges, structures, or other state inventory along the routes of travel.

General blanket permits are vehicle specific and cannot be transferred between vehicles. Since the permits are vehicle specific, the original permit or a legible copy of the entire permit is required to be carried in the transport vehicle. This permit shall be presented to Department of Motor Vehicles, law enforcement or Department of Transportation officials when requested.

All general blanket permits are issued through the Virginia Department of Motor Vehicle's headquarters office and all requests shall be made at least 10 workdays prior to the anticipated movement date.

[ Applicants who make multiple moves should strongly consider obtaining a general blanket. Generally, the larger the vehicle configuration, the more restrictive the regulations will be. General blanket permits should be used for core business needs or those moves that are the most frequent. For those rare or infrequent moves outside of core business transactions, routine single trip permits should be considered. ]

## Maximum Size and Weight Limitations for the General Blanket Permit

<u>Height:</u>	<u>14 feet</u>
<u>Width:</u>	<u>14 feet</u>
<u>Length:</u>	<u>[ 85 100 ] feet (including front or rear overhang)</u>
<u>[ Rear Overhang</u>	<u>10 feet ]</u>
<u>[ Front Overhang</u>	<u>3 feet ]</u>
<u>Single Axle:</u>	<u>24,000 pounds</u>
<u>Tandem Axle:</u>	<u>44,000 pounds</u>
<u>Tri-Axle:</u>	<u>Maximum weight based on axle [ spacings spacing ] between the centers of the first and last axle in the 3-axle group - see 24VAC20-81-80.</u>
<u>Quad Axle:</u>	<u>Maximum weight based on axle [ spacings spacing ] between the centers of the first and last axle in the 4-axle group - see 24VAC20-81-80.</u>
<u>Gross Weight:</u>	<u>Maximum weight based on the total number of axles in the configuration and the [ total ] amount of [ spacings spacing ] between the centers of the first and last axles - see 24VAC20-81-80.</u>

[ If the vehicle configuration exceeds any of the weight or width parameters defined for the general blanket permit, the applicant may be eligible to apply for the superload blanket permit or the superload single trip permit. ]

## **24VAC20-81-120. Superload blanket permit.**

When the vehicle [ configuration's single axle, tandem axle, tri axle or width exceed configuration exceeds ] the parameters allowed for the general blanket permit, the applicant may apply for [ the a ] superload blanket permit. [ No superload blanket permit shall exceed 14 feet in height, 16 feet in width, 105 feet in length, or 150,000 pounds gross weight. Furthermore, no blanket permit shall have more than three feet of front overhang or 10 feet of rear overhang, which are both included in the length of 105 feet. These permits may be issued on a case-by-case basis. ]

The superload blanket permit allows frequent movements within a specified time period statewide or on specific routes. All requests for the superload blanket permit must be submitted to the Hauling Permit Section at least 10 workdays in advance of the anticipated movement date. These permits are vehicle specific and can not be transferred between vehicle configurations. Superload blanket permits are issued

[ on a case by case basis and ] only after the appropriate reviews or VDOT engineering analysis have been completed to ensure that the vehicle configuration will not harm or damage bridges, structures, or other state inventory on the routes of travel. Results of the reviews or engineering analysis may render the vehicle configuration ineligible to move under the authority of a superload blanket permit.

**24VAC20-81-130. Exempted [ blanket ] permits; eligibility requirements.**

Listed below are some of the most frequently requested exempt permits. Most exempt [ permits blanket permit loads ] are reducible but have been granted statutory authority to operate on the state highway system. These permits are vehicle specific and cannot be transferred between vehicle configurations. The applicant must adhere to specific statutory criteria in order to qualify for these permits. For additional information concerning these permits contact the Virginia Department of Motor Vehicles at (804) 497-7135 or refer to the hauling permit website online at [www.dmvnow.com](http://www.dmvnow.com) or [www.dmv.virginia.gov](http://www.dmv.virginia.gov).

1. When transporting containerized cargo in a sealed seagoing container bound to or from a seaport, and the seagoing container has been or will be transported by marine shipment, the applicant is eligible to receive an exempt permit. The contents of the seagoing container shall not be changed from the time it is loaded by the consignor or his agents to the time it is delivered to the consignee or his agents.

2. Three- or four-axle [ ~~vehicles with an axle spacing of at least 22 feet that are~~ (four-axle vehicles must have 22 feet or more axle spacing) vehicles ] used exclusively for the mixing of concrete in transit or at a project site or for transporting necessary components in a compartmentalized vehicle to produce concrete immediately upon arrival at a project site are eligible to receive an exempt permit. This permit does not authorize travel on the federal interstate highway system.

3. Three-, four-, five-, and six-axle vehicles are eligible to obtain a permit to haul coal from a mine or other place of production to a preparation plant, loading dock, or railroad. Hauling of coal is restricted to 85 miles [ ~~from the origin to the destination~~ within the Commonwealth of Virginia from the preparation plant, loading dock, or railroad ] and travel is not authorized on the federal interstate highway system.

Vehicles hauling gravel, sand, or crushed stone, and vehicles hauling liquids produced from gas or oil wells or water used for drilling and completion of a gas or oil well do not require a permit. Travel is restricted to no more than 50 miles from the origin to the destination. All movements are valid only within the counties that impose a tax on coal or gases extracted from the earth and no travel is allowed on the federal interstate highway system.

4. Three- or four-axle [ ~~vehicles with an axle spacing of at least 22 feet~~ (four axle vehicles must have 22 feet or more axle spacing) vehicles ] hauling excavated materials from construction-related land clearing operations are eligible to receive an exempt permit. This permit does not authorize travel on the federal interstate highway system.

5. When hauling solid waste, other than hazardous waste, the applicant is eligible for an exempt permit. This permit is [ ~~only~~ ] limited to two- and three-axle vehicles. This permit does not authorize travel on the federal interstate highway system.

6. Vehicles used to haul farm produce grown in Virginia are eligible to receive an exempt permit. These permits are only valid in Accomack and Northampton counties.

7. Vehicles used exclusively to transport seed cotton modules are eligible to receive an exempt permit. This permit does not authorize travel on the federal interstate highway system.

8. Self-propelled motor vehicles manufactured for the specific purpose of supporting well-drilling machinery on the job site and whose movement on any highway is incidental to the purpose for which it was designed and manufactured for is eligible to receive an exempt permit. This permit does not authorize travel on the federal interstate highway system.

9. Vehicles or equipment that is registered in the name of the United States government, state or local agencies shall receive without cost, an overdimensional or overweight permit to move overdimensional or overweight items. Contractors moving items on behalf of the United States government, state or local agencies are not eligible to receive this permit at no cost.

10. A straight truck designed or used to carry fuel and having a capacity of less than 6,000 gallons is eligible for an exempt permit. The tank wagon is limited to two axles and shall not exceed a gross weight of 36,000 pounds, nor can it exceed 24,000 pounds on a single axle. This permit does not [ ~~authorized~~ authorize ] travel on the federal interstate highway system.

11. For purposes of this section, "underground pipe cleaning equipment" means a self-propelled motor vehicle manufactured for the specific purpose of vacuuming and cleaning underground sanitary and storm pipe. "Hydroexcavating equipment" means a self-propelled motor vehicle manufactured for the specific purpose of digging with water and vacuuming of debris. "Water blasting equipment" means a self-propelled motor vehicle manufactured for the specific purpose of waterblasting flat concrete surfaces and vacuuming spent water for reuse. The above vehicles are eligible to receive an exempt permit. This permit does not [ ~~authorized~~ authorize ] travel on the federal interstate highway system.

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[ Note: Exempt blanket permits are permitted by the Code of Virginia and are subject to change. ]

## Part IV Fees

### **24VAC20-81-140. Hauling permit administrative fees and other fees required by law; escort driver certification fees.**

#### Hauling Permits:

Single Trip [ <u>Hauling</u> ] Permit	\$20
Superload Single Trip Permit	\$30
General Blanket Permit – 1 year	\$100
General Blanket Permit – 2 years	\$200
Superload Blanket Permit – 1 year or less	\$100
[ <u>Tank Wagon Permit (1 year)</u> ]	[ <u>\$845</u> ]
Exempt Blanket [ <u>Permits Permit</u> ]	[ <u>\$100 Determined by the Code of Virginia</u> ]

In addition to the administrative fees listed above, Virginia law requires that all hauling permits be assessed an additional mileage fee if the vehicle configuration is overweight or if the equipment used is unlicensable in Virginia. Additional fees required by Virginia law may be applicable and will be collected as required. Refer to the hauling permit website at [www.dmvnow.com](http://www.dmvnow.com) for questions concerning fees.

#### Escort Driver Certification:

Original Certification	\$25
Renewal	\$25
Reissue	\$15
Duplicate	\$15

## Part V Travel Guidelines

### **24VAC20-81-150. Travel restrictions; holiday travel; days and times of travel; speed limits.**

A. Permitted vehicle configurations are allowed to travel on all holidays except the following state observed holidays: (i) New Year's Day, (ii) Memorial Day, (iii) Independence Day, (iv) Labor Day, (v) Thanksgiving Day, and (vi) Christmas Day.

On the holidays mentioned above, permits will not be valid from noon the preceding weekday through the holiday. If the observed holiday falls on a Monday the permit will not be valid from noon on the preceding Friday through Monday.

B. Normal times of travel for permitted loads are [ ~~30 minutes after~~ ] sunrise to [ ~~30 minutes before~~ ] sunset, Monday through Saturday. [ ~~Vehicle~~ Some super load

vehicle ] configurations [ ~~that are 16 feet wide or greater~~ ] may be required to travel during the hours of darkness [ ~~(9:30 p.m. to 5 a.m.)~~ ]. No permitted travel is allowed within the corporate limits of cities/towns between the hours of 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. except for configurations that are overweight or overlength (not exceeding 85 feet, including rear overhang) only. No travel is allowed on Sundays, except for loads that are permitted for overweight or overlength (not exceeding 85 feet, including rear overhang) only. The Hauling Permit Section [ ~~shall have the authority to route vehicles outside~~ may modify ] the normal hours of travel or restrict times of travel [ ~~during normal hours of travel~~ ] if it is determined necessary giving primary consideration to the safety and well-being of the traveling public.

When road conditions, visibility or unfavorable weather conditions make traveling hazardous to the operator or to the traveling public, permitted vehicles are not authorized to operate unless responding to an emergency. [ ~~Vehicles that are underway when inclement weather occurs shall exit the road at the first available safe location and park in a safe place until the weather clears or until road conditions improve to allow safe travel conditions.~~ ] Law-enforcement judgment shall prevail in all circumstances.

[ ~~C. Unless otherwise specified within the permit, the maximum speed limit for permitted vehicle configurations is the posted speed limit not to exceed 55 miles per hour.~~ ]

## Part VI

Escort Vehicles and Equipment Requirements; Escort Vehicle Driver Certification; and General Escorting Guidelines

### **24VAC20-81-160. Escort vehicles and equipment requirements.**

[ ~~A. Depending on the routes of travel, escorts may be required for vehicle configurations exceeding 10 feet in width, 13 feet 6 inches in height, 85 feet in length, when more than 15 feet or more of front or rear overhang exist, or when determined as necessary by the issuing agent giving primary consideration to the safety of the traveling public, the attributes of the configuration, and the geographical location of the move.~~

~~B. A. ] The escort vehicle shall be a truck not less than one-quarter ton-rated load capacity but not more than 17,000 pounds gross vehicle weight rating (GVWR) or a passenger vehicle of not less than 2,000 pounds gross weight. Escort vehicles shall not resemble nor be confused with law-enforcement or safety-assistance vehicles. Escort vehicles shall be in compliance with all state and local registration processes required by the state in which the vehicle is registered. Escort vehicles shall not be overdimensional or overweight while in use performing escorting duties. They are not permitted to pull a trailer of any kind while performing escorting duties [ and shall have an unobstructed view through the rear window ].~~

[ ~~C. B.~~ ] All escort vehicles shall be equipped with a two-way radio communication system to maintain communications between the permitted vehicle driver and all escort vehicles in the group.

[ ~~D. C.~~ ] Front or lead escort vehicles are required to have a height pole/hot-pole when required by permit. While performing escorting duties the pole shall be extended at least three inches above the specified height of the vehicle configuration being escorted.

[ ~~E. D.~~ ] Escort vehicles headlamps shall be on at all times while escorting oversized/overweight movements.

[ ~~F. E.~~ ] All escort vehicles shall have at least one [ light ], rotating or strobe, positioned on top of the escort vehicle. The light must be visible for a distance of at least 500 feet in all directions by approaching vehicles.

[ ~~G. F.~~ ] Paddles shall be at least [ ~~24~~ 18 ] inches by [ ~~24~~ 18 ] inches with six-inch high lettering. For greater visibility, a high-intensity flashing stop/slow paddle may be used.

[ ~~H. G.~~ ] All flags used for flagging purposes shall be red or any highly fluorescent color, not less than 18 inches square and in good condition. Flags shall be placed at the extremities of a vehicle load to identify overwidth or secured at the end of the load to identify overhang.

[ ~~I. H.~~ ] Individuals performing flagging activities shall wear a hard hat and a red or any highly visible fluorescent [ ~~colored~~ jacket or vest traffic vest or jacket of approved Type ANSI II or III ].

[ ~~J. I.~~ ] Escort vehicles shall have signs, descriptive of the load [ ~~it is escorting~~ being escorted ], i.e., "Wide Load" or "Oversize Load" or "Overweight Load." At a minimum, the signs shall be displayed in black eight-inch high letters with [ ~~1-1/2 inch~~ a minimum of 1-1/4 inch ] brush strokes on a yellow banner. The banner shall be mounted on the front and rear bumper of the escort vehicle. If displayed on the roof of the escort vehicle other drivers must be able to read the signs when approaching or following the escort vehicle.

[ ~~K. J.~~ ] A minimum of one Underwriters Laboratories [ ~~(U.L.)~~ (UL) ] or Factory Mutual Laboratories [ ~~(F.M.)~~ (FM) ] approved, five pounds or greater, Type "BC" or "ABC" fire extinguisher shall be carried in the escort vehicle or escort vehicles.

[ ~~L. K.~~ ] Reflective triangles or road flares shall be used to warn oncoming or approaching vehicles of a breakdown.

## **24VAC20-81-170. Escort vehicle driver certification.**

Certification as an escort vehicle driver is mandatory when escorting oversized loads [ ~~exceeding 12 feet in width, or 85 feet in length, or 14 feet in height.~~ Certification is also required when escorting a load with 15 feet or more of rear overhang or 10 feet or more of front overhang, or whenever an off centered load exceeds five feet. The overhang of an

~~off centered load must be loaded to the passenger side of the transport vehicle ].~~

Virginia residents who possess a valid Virginia driver's license shall obtain their certification through Virginia's Escort Vehicle Driver Certification Program. Non-Virginia residents may be certified through Virginia's Escort Vehicle Driver Certification Program or through a certification program from another state. Regardless of what state certifies the driver as an escort driver, certification is considered invalid if the driver's license is not valid.

[ ~~The Virginia Escort Vehicle Driver Certification test is available at all Virginia Department of Motor Vehicles Customer Service Center locations. The applicant is required to successfully pass a multiple choice exam before a certificate can be issued.~~ ]

Successful applicants shall carry the certification document with them while escorting vehicle configurations [ ~~that require certified escort vehicle drivers~~ ]. Certification, along with a driver's license, must be presented when requested by any Department of Motor Vehicles, law enforcement or Department of Transportation officials when requested. Failure to have the certification in possession while escorting a permitted load [ ~~that requires a certified escort~~ ] will cause the movement to be delayed until proper escorts and credentials are in place.

Additional information concerning Escort Vehicle Driver Certification in Virginia can be requested by calling the Hauling Permit Section at (804) 497-7135.

## **24VAC20-81-180. General escorting guidelines.**

[ ~~Escort vehicle drivers or certified escort vehicle drivers may be required depending on the routes of travel and the overall dimensions of the vehicle configuration. Escorts will not be picked up or dropped as the permitted configuration travels through the Commonwealth. Escorts, when required by permit will stay with the vehicle configuration throughout the duration of the move. All escort vehicle operators are required to be certified prior to performing the duties of an oversize/overweight load escort vehicle operator in Virginia.~~ ] General guidelines as to when escorts are required follows; this listing is not all inclusive:

~~1. One front escort is required on all roads if the permitted load exceeds 10 feet in width or 75 feet in overall length.~~

~~2. One certified front escort is required on all roads if the permitted load exceeds 12 feet in width or 85 feet in length.~~

~~3. One front and two rear escorts, all certified, will be required on all roads if the permitted load exceeds 14 feet in width.~~



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~~4. One front escort is required on all roads when the front overhang exceeds four feet.~~

~~5. One certified front escort is required on all roads when the front overhang is 10 feet or more.~~

~~6. One rear escort will be required on all roads when the rear overhang is 10 feet or more.~~

~~7. One certified rear escort is required on all roads when the rear overhang is 15 feet or more.~~

~~8. One certified front escort equipped with height pole is required on all roads when the permitted load exceeds 14 feet in height.~~

~~9. One front escort is required on all roads when the off centered load exceeds three feet on the passenger side of the vehicle configuration.~~

~~10. Two certified front escorts will be required when the off centered load exceeds five feet on the passenger side of the vehicle configuration.~~

~~11. One front and one rear escort, both certified, is required on all roads when the permitted load exceeds 100 feet in overall length.~~

~~12. Two front and two rear escorts, all certified, will be required on all roads when the permitted load exceeds 18 feet in width or 200 feet in length.~~

1. One front and one rear escort is required on noninterstate routes when the permitted load exceeds 12 feet in width.

2. One rear escort is required on interstate routes when the permitted load exceeds 12 feet in width.

3. Two front and one rear escorts are required on noninterstate routes when the permitted load exceeds 14 feet in width.

4. One front and one rear escort is required on interstate routes when the permitted load exceeds 14 feet in width.

5. Two front and two rear escorts are required on noninterstate routes when the permitted load exceeds 16 feet in width.

6. One front and two rear escorts are required on interstate routes when the permitted load exceeds 16 feet in width.

7. One front escort is required when an off-centered load exceeds three feet six inches on the passenger side of the vehicle configuration.

8. One front escort and one rear escort is required when an off-centered load exceeds five feet on the passenger side of the vehicle configuration.

9. One front escort equipped with height pole, adjusted three inches above the load height, is required on all routes

when the permitted load exceeds 14 feet five inches in height.

10. One rear escort is required on noninterstate routes when the permitted load exceeds 85 feet in length.

11. One rear escort is required on interstate routes when the permitted load exceeds 120 feet in length.

12. One front and one rear escort is required on all routes when the permitted load exceeds 150 feet in length.

13. One front escort is required on all routes when the permitted load has a front overhang that exceeds 10 feet (measured from the bumper).

14. One rear escort is required on all routes when the permitted load has a rear overhang that exceeds 15 feet (measured from the bumper).

15. Permit loads that exceed 18 feet wide or 200 feet long will be handled on a case-by-case basis.

Escort requirements are subject to change with individual consideration of weight, width, length, height, geographical location, or route of travel as determined by the issuing agent. ]

## Part VII

### Emergency and National Defense Moves

#### **24VAC20-81-190. Emergency moves.**

Requests for emergency moves will be carefully reviewed on a case-by-case basis. An emergency is defined as "a calamity, existing or imminent, caused by fire, flood, riot, windstorm, explosion, [ or ] act of God, [ or other situation ] which requires immediate remedial action to protect life or property."

In some instances waivers are issued by the appropriate state authority exempting overweight/overwidth carriers from statutory size and weight limitations who are responding to and supporting relief efforts. Maximum size and weight limitations will be identified in the waiver and all requests that exceed those limitations will have to apply for a hauling permit in accordance with established processes that govern the permitting process.

Emergency move requests and questions concerning waivers issued in support of a declared relief effort or disaster shall be made through the Virginia Department of Transportation's Emergency Operations Center (TEOC) at 1-800-367-7623. TEOC is open 24 hours a day, seven days a week. During normal business hours, contact the Hauling Permit Section at (804) 497-7135.

Blanket permit users may request "emergency travel regulations" when ordering permits if there is a possibility that the equipment or commodity permitted will be required in support of an emergency as defined above. Having emergency travel regulations in the permit may allow

response to the emergency using the blanket permit, if that permit covers the routes [ ~~of travel intended to use~~ used to respond to the emergency ]. However, the permittee must contact the Virginia Department of Transportation's Emergency Operations Center and give them vital travel information that will be passed on to the Virginia State Police, all applicable law-enforcement jurisdictions, and DMV weigh stations.

## **24VAC20-81-200. National defense moves.**

The U.S. Department of Defense's Military Traffic Command shall be the sole certifying agency during peacetime for all movements made by an agency declared essential to the national defense. During a national emergency, movements essential to national defense would be far greater in scope, and those not under direct control of one of the military departments or Department of Defense agencies would be certified by the appropriate emergency transportation authority.

### Part VIII Responsibilities

## **24VAC20-81-210. Compliance with state laws and permit requirements.**

A. The acceptance and use of the Virginia hauling permit by the applicant or his designee is his agreement that he will proof the permit for accuracy prior to traveling on Virginia's highways. If the document is incorrect, the permittee will immediately contact the Hauling Permit Section to obtain the proper permit prior to traveling over Virginia's highways. The permittee accepts full responsibility and the consequences associated with having a hauling permit containing erroneous or incorrect information.

B. The acceptance and use of the Virginia hauling permit by the applicant is his agreement that he has met all legal requirements concerning operational authority imposed by motor vehicle laws of Virginia, the Department of Motor Vehicles, or the [ ~~Interstate Commerce Commission~~ federal government ].

C. The acceptance and use of the Virginia hauling permit by the applicant is his agreement that each vehicle permitted is insured no less than that required by the Commonwealth of Virginia.

D. The acceptance and use of the Virginia hauling permit by the applicant is his agreement to pay for all damages and cost involved to persons or property as a result of the permitted movement.

E. The acceptance and use of the Virginia hauling permit by the applicant is his agreement that he will comply with all the terms and conditions as specified within the permit.

F. The permittee, an agent of the permittee, or any member of the permittee's company, shall within 15 workdays notify

the Hauling Permit Section, if the permitted vehicle is involved in any accident. Failure to notify the Hauling Permit Section of involvement in an accident may result in suspension or denial of permitting privileges as specified in 24VAC20-81-230.

## **24VAC20-81-220. Injury or damage.**

The permittee assumes all responsibility for an injury to persons or damage to public or private property caused directly or indirectly by the transportation of vehicles and loads moving under the authority of a state-issued permit. Furthermore, the permittee agrees to hold the Commonwealth of Virginia, Department of Motor Vehicles and its employees and other state agencies and their employees harmless from all suits, claims, damages or proceedings of any kind, as a direct or indirect result of the transportation of the permitted vehicle.

### Part IX

Denial; Revocation; Refusal to Renew; Appeal; Invalidation

## **24VAC20-81-230. Denial; revocation; refusal to renew; appeal; invalidation.**

A. An overweight or oversize permit may be revoked by the Department of Motor Vehicles upon written findings that the permittee violated the terms of the permit, which shall incorporate by reference these rules, as well as state and local laws and ordinances regulating the operation of overweight or oversized vehicles. Repeated violations may result in a permanent denial of the right to use the state highway system or roads for transportation of overweight and oversized vehicle configurations. A permit may also be revoked for misrepresentation of the information on the application, fraudulently obtaining a permit, alteration of a permit, or unauthorized use of a permit.

B. Hauling permits may be denied to any applicant or company, or both, for a period not to exceed one year when the applicant or company or both has been notified in writing by the Department of Motor Vehicles designee that violations existed under a previously issued permit. Customers who are delinquent in payment to other DMV functions will be denied a hauling permit until their delinquent account or accounts are satisfied.

C. No permit application request shall be denied or revoked, or permit application renewal refused, until a written notice of the violation of the issued permit has been furnished to the applicant. The permittee may appeal in writing to the Assistant Commissioner of Motor Carrier Services or his designee within 10 working days of receipt of written notification of denial or revocation setting forth the grounds for making an appeal. Upon receipt of the appeal, the Assistant Commissioner for Motor Carrier Services or his designee will conduct an informal fact-finding process conforming to the requirements of the Code of Virginia and will issue a case decision that will be the final administrative

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step. Judicial review of such decision shall be available pursuant to § 2.2-4025 of the Administrative Process Act. Upon revocation of the permit, it must be surrendered without consideration for refund or credit of fees. Upon restoration of permit privileges a new hauling permit must be obtained prior to movement on the state highway system.

~~[ D. A Hauling Permit may be invalidated and confiscated by law enforcement officials or weight enforcement officials if the permitted vehicle or vehicle combination: is found to be operating off route; has fewer axles than that required within the permit; is moving a commodity other than that specified within the permit; is willfully (intentionally) traveling outside the hours specified within the permit; is traveling without escorts as required by the permit; or if the driver does not have the entire permit in the vehicle. In these situations, in addition to taking legal enforcement actions, law and weigh enforcement personnel shall have the authority to direct the vehicle configuration to a safe location, at the permittee's expense, and detain the vehicle configuration until it meets all of the requirements of the permit as stated or until a new hauling permit is issued.~~

D. Law-enforcement officials or weight-enforcement officials may invalidate or confiscate a hauling permit if the permitted vehicle or vehicle combination is operating off the route listed on the permit; if the vehicle has fewer axles than required by the permit; if the vehicle has less axle spacing than required by the permit when measured longitudinally from the center of the axle to center axle with any fraction of a foot rounded to the next highest foot; or if the vehicle is transporting multiple items not allowed by the permit.

Law-enforcement officials or weight-enforcement officials may direct the vehicle to a safe location, at the permittee's expense, and detain the vehicle configuration until it meets all the requirements of the hauling permit or until a new hauling permit is issued if the vehicle is not traveling with escorts as required by the permit; if the vehicle is traveling outside the hours specified within the permit; if the driver does not have the entire permit in the vehicle; if the hauling permit has been invalidated or confiscated due to one of the conditions listed in subsection C of this section; if the vehicle is over the permitted weight; or if law enforcement deems the vehicle to be violating any safety requirement. ]

## Part X

### Transportation of Explosives, Radioactive and Other Hazardous Materials

#### 24VAC20-81-240. Transportation of explosives, radioactive and other hazardous materials.

A. A person, shipper or carrier transporting or proposing to transport explosives or other hazardous materials shall do so in compliance with all provisions of 49 CFR Parts 100 through 180. Hazardous materials are those described by class in 49 CFR Parts 173 through 180.

B. All transporters who transport hazardous waste that originates or terminates in Virginia for the purpose of storage, treatment or disposal shall apply for and receive an Environmental Protection Agency (EPA) identification number that is unique to the transporter, and apply for a transportation permit from the Virginia Department of Environmental Quality, Waste Division.

Transporters of hazardous waste generated outside of Virginia and designated for delivery to a treatment, storage or disposal facility in another state shall conform with the manifest requirements of those states or EPA, as prescribed in 40 CFR Part 262. Specific questions regarding the movement and permitting of hazardous materials and hazardous waste should be addressed to:

Department of Environmental Quality  
629 East Main Street  
P.O. Box 10009  
Richmond, VA 23240-0009

Phone: 804-698-4249 (Hazardous Materials)  
804-698-4237 (Hazardous Waste)

Questions regarding the movement of Hazardous Materials through tunnels or bridges, or both, shall be addressed to:

Department of Transportation  
Hazardous Materials Officer  
1221 East Broad Street  
Richmond, VA 23219  
Phone: 804-371-0891

Questions regarding hazardous material spills or incidents shall be addressed to: CHEMTREC 1-800-424-9300 (24 hours a day).

## Part XI

### Weigh Stations; Location

#### 24VAC20-81-250. Permanent weigh stations.

Operators of trucks which have a registered gross weight in excess of 7,500 pounds are required by law to drive their vehicles onto scales for weight inspection as directed by either a police officer or regulatory highway signs. By Virginia law, a police officer may require the operator of a truck to drive a distance not to exceed 10 road miles to a weigh facility or location for weight inspection. Refusal to drive onto scales for inspection is a misdemeanor. Locations for the weigh stations in Virginia are as follows:

<u>Station</u>	<u>Route</u>	<u>Location</u>
<u>1. Alberta</u>	<u>85</u>	<u>Alberta</u>
<u>2. Aldie</u>	<u>50</u>	<u>Aldie</u>
<u>3. Bland</u>	<u>77</u>	<u>Bland</u>
<u>4. Carson</u>	<u>95</u>	<u>Carson</u>

<u>5. Dahlgren</u>	<u>301</u>	<u>Dahlgren</u>
<u>6. Dumfries</u>	<u>95</u>	<u>Triangle</u>
<u>7. Hollins</u>	<u>11</u>	<u>Hollins</u>
<u>8. Middletown</u>	<u>11</u>	<u>Middletown</u>
<u>9. New Church</u>	<u>13</u>	<u>Temperanceville</u>
<u>10. Sandston</u>	<u>64</u>	<u>Sandston</u>
<u>11. Stephens City</u>	<u>81</u>	<u>Stephens City</u>
<u>12. Suffolk</u>	<u>58</u>	<u>Suffolk</u>
<u>13. Troutville</u>	<u>81</u>	<u>Troutville</u>

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (24VAC20-81)

Virginia's Size, Weight, and Equipment Requirements for Trucks, Trailers and Towed Vehicles, DMV 109 (rev. 7/08).

Virginia Single Trip Superload Hauling Permit Application, HP 400 (rev. 8/08).

Virginia Blanket Hauling Permit Application, HP 401 (rev. 1/07).

Virginia Exempt Blanket Hauling Permit Application, HP 402 (rev. 8/08).

Virginia Hauling Permit Addendum Additional Axle Form, HP 403 (rev. 1/07).

Vehicle Escort Driver Application, HP 404 (rev. 3/06).

Virginia Escort Driver's Manual, HP 405 (rev. 6/06).

VA.R. Doc. No. R07-271; Filed August 6, 2009, 10:41 a.m.

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# GENERAL NOTICES/ERRATA

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## STATE BOARD OF EDUCATION

### Proposed Economics and Personal Finance Standards of Learning

The Virginia Board of Education is seeking public comment on proposed Standards of Learning for Economic and Personal Finance.

The Department of Education has posted the proposed Economics and Personal Finance Standards of Learning at [http://www.doe.virginia.gov/boe/meetings/2009/06\\_jun/agenda\\_items/item\\_b.pdf](http://www.doe.virginia.gov/boe/meetings/2009/06_jun/agenda_items/item_b.pdf).

Public comment will be received from September 17, 2009, until October 30, 2009, and can be submitted via email at [economicsandpersonalfinance@doe.virginia.gov](mailto:economicsandpersonalfinance@doe.virginia.gov).

Three public hearings will be held, as follows:

September 17, 2009, Virginia Department of Education, James Monroe Building, Jefferson Room, 22nd Floor, 101 N. 14th Street, Richmond, VA 23219.

Time: Immediately following the Board of Education meeting. Registration of speakers will begin at 9 a.m. Directions to this location may be found at [http://www.doe.virginia.gov/VDOE/contact\\_us.html](http://www.doe.virginia.gov/VDOE/contact_us.html).

September 22, 2009, Riverlawn Elementary School, 8100 Beth Nelson Drive, Fairlawn, VA 24141. Time: 7 p.m. Registration of speakers will begin at 6 p.m. Directions to this location may be found at <http://www.pcva.us/schools/RIV/index.htm>.

September 22, 2009, Robinson Secondary School, 5035 Sideburn Road, Burke, VA 22032.

Time: 7 p.m., Registration of speakers will begin at 6 p.m. Directions to this location may be found at <http://www.fcps.edu/maps/robin.htm>.

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

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Notice to Restore Water Quality for Totuskey and Richardson Creeks

Public meeting: September 9, 2009, at the Richmond County YMCA, 13207 History Land Highway, Warsaw, VA 22572. An afternoon public meeting will be held from 2 p.m. to 4 p.m. and the evening public meeting from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation

are announcing the completion of a study to restore water quality for a shellfish growing area, a public comment opportunity, and two public meetings.

Meeting description: Final public meetings on a study to restore water quality for shellfish growing areas along Totuskey and Richardson Creeks, which are impaired due to bacterial violations in Richmond County.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in the shellfish growing waters of these (tidal) creeks including their tributaries. These streams are impaired for failure to meet the designated use of shellfish consumption because of bacterial water quality standard violations. Totuskey Creek also has a recreational impairment (swimming). The recreational water quality standard is less stringent than that of the shellfish standard, therefore it is expected that clean-up efforts aimed at restoring the shellfish use will also result in attainment of the recreational use. The study reports the status of the creeks via sampling performed by the Virginia Department of Health - Division of Shellfish Sanitation, shellfish area condemnations, and the possible sources of bacterial contamination. The study recommends total maximum daily loads (TMDLs) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount. The draft report for the study is available at <https://www.deq.virginia.gov/TMDLDataSearch/DraftReports.jsp>.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will expire on October 8, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email [margaret.smigo@deq.virginia.gov](mailto:margaret.smigo@deq.virginia.gov).

## STATE WATER CONTROL BOARD and VIRGINIA WASTE MANAGEMENT BOARD

### Consent Special Order for Strata Mine Services, Inc.

An enforcement action has been proposed for Strata Mine Services, Inc., for alleged violations in Russell County. The special order by consent will address an unauthorized discharge to state waters and violations of the Virginia Hazardous Waste Management Regulations. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Dallas R. Sizemore

will accept comments by at email at [dallas.sizemore@deq.virginia.gov](mailto:dallas.sizemore@deq.virginia.gov), FAX (276) 676-4899 or postal mail Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, 355 Deadmore Street, Abingdon, VA 24212, from August 31, 2009, to September 30, 2009.

### **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.

